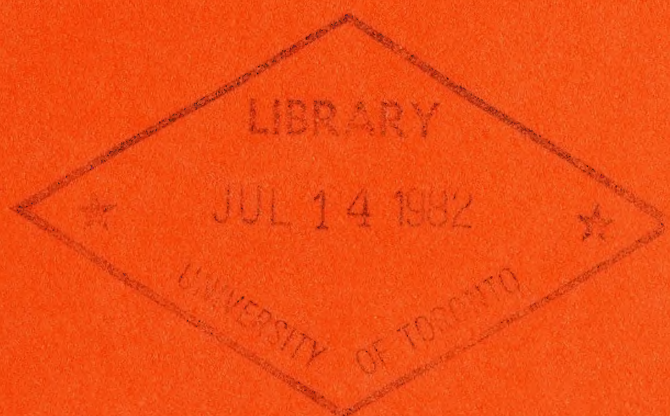


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Summaries of
Decisions
Volume 5
(1981)

Liquor Licence Appeal Tribunal



Ontario

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LIQUOR LICENCE APPEAL TRIBUNAL

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LIQUOR LICENCE APPEAL TRIBUNAL
SUMMARIES OF DECISIONS * - VOLUME 5
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Published pursuant to the Liquor Licence Act,
Statutes of Ontario, 1980, Chapter 244

LIQUOR LICENCE APPEAL TRIBUNAL

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BEEF BARON TAVERN

APPEAL FROM A DECISION OF THE LIQUOR LICENCE
BOARD TO REVOKE THE DINING LOUNGE LICENCE

TRIBUNAL: JOHN W. ERICKSON, Q.C., VICE-CHAIRMAN AS CHAIRMAN
KENNETH VanHAMME, MEMBER
JACK SIM, MEMBER

COUNSEL: JAMES R. TOWNSEND, representing the Applicant
S.A. GRANNUM, representing the Liquor Licence Board

HEARING

DATE: October 21st, 1981

REASONS FOR DECISION AND ORDER

We'll deal first with the appeal involving the revocation order of the Liquor Licence Board of Ontario, dated March 31, 1981. At the outset, a number of things should be noted. First that the allegations which are set out in the Proposal which was forwarded by the Board to the licensee, relating to minors and permitting drunkenness on the premises, in the opinion of the Tribunal, have effectively either been withdrawn or certainly not supported by the evidence and they form no part in the Tribunal's decision.

In the Reasons for Appeal filed by Mr. Townsend there was mention of certain aspects of the hearing before the Liquor Licence Board of Ontario which have been construed by the Tribunal to be basically comments based on the concept known as natural justice. I might indicate that we pass no comment on the Board's conduct of its hearings for the purposes of our decision. It has been agreed by Mr. Townsend that he does not suggest in this hearing that there has been any denial of his right to call evidence on behalf of his client.

There are also admissions which are relevant to the issue at hand; first, there is no dispute that there is a significant imbalance in the food and liquor ratio which is required by Section 6(5) of the Regulations to the Act. In fact, the Tribunal goes further and states that the imbalance is significant and is admitted. As I indicated before, there also is no cogent evidence which was called with respect to the aspect of permitting drunkenness, although Mr. Grannum did purport to submit the evidence of the proceedings before the Board. Since it is admitted that there is a breach of the Regulation by the licensee, the issue as the Tribunal sees it resolves itself to one of disposition. The history of this

restaurant indicates that prior to the year 1977, Mr. Barletta carried on in business as a restaurant operator and found the going difficult financially and as a result, sought a liquor licence and went into a different form of operation which utilized entertainment, as what might be described as the drawing card to have patrons come to his establishment and eat and drink, as the case may be.

It is noteworthy that in 1979 Mr. Barletta appeared before the Tribunal with respect to a breach of the Regulation requiring the 50/50 food/liquor ratio. That decision is reported in Volume 3 of the Liquor Licence Appeal Tribunal Summaries, page 20. A review of that decision indicates that the concerns with respect to this operation were virtually identical as those concerns which are the subject matter of the appeal before us today. A review of that decision further indicates that it was determined through the evidence that in fact the root cause for the imbalance was the form of entertainment which Mr. Barletta had elected to bring into his establishment and as a result there was an imbalance in the food/liquor ratio. It is noteworthy when one compares the figures which were filed at that hearing in 1979 with the figures which were filed before the Tribunal at this hearing that if anything, there has been a deterioration in the situation, and certainly nothing that can be called or categorized as improvement. The Tribunal finds as a fact that there is nothing tangible or there is no tangible evidence perhaps that any substantial effort has been made since 1979 to correct the imbalance.

It is clear from the evidence that Mr. Barletta, since 1979 or perhaps earlier, has made a reasonable or perhaps a good living from this business, based on his own evidence wherein he indicated he has acquired some properties in the vicinity of the restaurant. It is also clear that the way he chose to carry on his business has always been at the source of his problem, that is, the entertainment. Section 16 paragraph 2 of the Act indicates that the licensee in situations such as this should be afforded a reasonable opportunity to achieve compliance with the Act and the Regulations. Mr. Grannum, for the Board, makes it a cornerstone of his argument that in fact, Mr. Barletta has been offered that opportunity to achieve compliance and has failed to do so and that there is no reasonable expectation that he will do so. Mr. Townsend's submission on behalf of Mr. Barletta is that there is a problem with respect to the type of clientele that comes to this establishment and through his client's evidence and on Mr. Barletta's behalf, he has placed before the Tribunal an undertaking to the effect that the entertainment will be

removed and that the operation will revert to a different type of restaurant operation and that it's a question of needing additional time.

The Tribunal is of the view and finds that Mr. Barletta has received full and reasonable consideration from the Board and from the Tribunal since 1979, and in its opinion has received a reasonable opportunity of achieving compliance with the Act. It is the Tribunal's view that the Regulations and the Act must be presumed to reflect the will of the Ontario Legislature and the Tribunal considers its duty to enforce the law and if necessary to deter others from similar breaches. The Tribunal is of the view that any further exercise of its discretion to delay compliance with the Act and the Regulation is unwarranted. It is the Order therefore of the Tribunal that the licence bearing number 091726 granted to Domenico Barletta in respect of the Beef Baron Tavern, be and the same is hereby revoked, effective as of the closing hour on Saturday, November 28, 1981.

The above decision and reasons therefor were orally given at the conclusion of the hearing by the Chairman in the presence of the other two members who concurred.

LIQUOR LICENCE APPEAL TRIBUNAL

BEEF BARON TAVERN

APPEAL FROM A DECISION OF THE LIQUOR LICENCE BOARD
TO ATTACH A TERM AND CONDITION TO THE DINING LOUNGE
LICENCE

TRIBUNAL: JOHN W. ERICKSON, Q.C. VICE-CHAIRMAN AS CHAIRMAN
KENNETH VanHAMME, MEMBER
JACK SIM, MEMBER

COUNSEL: JAMES R. TOWNSEND, representing the Applicant
S.A. GRANNUM, representing the Liquor Licence Board

HEARING
DATE: October 21, 1981

REASONS FOR DECISION AND ORDER

With respect to the second matter which is before the Tribunal, the comments made in the previous appeal will apply, perhaps I can say mutatis mutandis, and in order to provide some uniformity, the Tribunal as its decision revokes the Order of the Liquor Licence Board of Ontario dated May 13, 1980 and orders that the licence bearing number 091726, granted to Domenico Barletta, in respect of the Beef Baron Tavern, be and the same is hereby revoked effective as of the closing hour on Saturday, November 28, 1981. I might add that it was agreed by Counsel that the evidence that was given here viva voce before the Tribunal would apply to both matters.

The above decision and reasons therefor were orally given at the conclusion of the hearing by the Chairman in the presence of the other two members who concurred.

CENTENNIAL COLLEGE OF
APPLIED ARTS AND
TECHNOLOGY

MEETING TO CONSIDER WHETHER LIQUOR LICENCE APPEAL
TRIBUNAL HAS JURISDICTION TO HOLD A HEARING WITH
RESPECT TO AN APPEAL FROM A DECISION OF THE
LIQUOR LICENCE BOARD BY MORRIS SILVER AND EDITH
SILVER

TRIBUNAL: JOHN YAREMKO, Q.C., CHAIRMAN
JOHN W. ERICKSON, Q.C., MEMBER
GORDON I. PURVIS, Q.C., MEMBER

COUNSEL: MORRIS SILVER and EDITH SILVER, in person

J. G. RICHARDSON, for Centennial College of
Applied Arts and Technology

S. A. GRANNUM, for Liquor Licence Board

HEARING
DATE: March 4, 1981

REASONS FOR TRIBUNAL RULING

The facts of the application are clear. Centennial College of Applied Arts and Technology applied for a dining lounge licence and a patio dining lounge license pursuant to the provisions of The Act, section 6, subsection 3:

"Where an application is made for a licence under this section and subject to compliance with clause g of subsection 1, the applicant is not disentitled, the Board shall advertise the fact of the application, the nature of the licence applied for and the location of the premises at least twice in a newspaper having general circulation in the municipality in respect of which the licence is applied for and shall fix in the advertisement a time and place in the licensing district for the residents of the municipality to make representations to the Board concerning the application."

The required newspaper notice was given and Mr. Morris Silver and Mrs. Edith Silver, the applicants for the hearing obtained notice of the application in this regard.

The Board held a meeting on October 9, 1980 pursuant to section 6 (4) of The Act.

"The Board or such member or members thereof as are designated by the chairman shall hold a public meeting in accordance with the notice under subsection 3 for the purpose of receiving the representations referred to therein and shall take such representations into consideration for the purposes of this section."

It is clear that the legislature has made provision for the public to be informed in this way, and for an opportunity of representations to be made to the Board with respect to the matters set out in subsection 6 as a basis of its decision.

At the meeting on October 9, 1980 Mr. and Mrs. Silver appeared in opposition to the application, making representations related to section 6, subsection 1, paragraph g. The Tribunal notes also for the record that there was a general objection made on behalf of the West Toronto Inter Church Temperance Federation with respect to the applications being considered by the Board at this meeting.

By letter dated the 21st of October, the licence officer of the Liquor Licence Board advised Mr. and Mrs. Silver that the Board "has approved the issue of this licence, subject to the applicant meeting the provisions of The Liquor Licence Act and Regulations and complying with the legal requirements of the municipal agencies, departments or authority concerned."

Following the receipt of this letter, Mr. and Mrs. Silver wrote to the Tribunal stating their wish to appeal the issuance of the licence, in effect requesting a hearing to be held by the Tribunal. That request has been objected to on behalf of both the Board and on behalf of the licensee. The position has been taken that this Tribunal has no jurisdiction to hold a hearing. This is the first time that the Tribunal has been called upon to deal specifically with this matter under the circumstances of this application.

The jurisdiction of the Tribunal must be found within the statutes by which the Tribunal is governed. The Tribunal is bound by the law as all authorities are bound by the law. The Tribunal's authority and powers have to be found within The Act. It is bound to interpret and apply The Act as the legislature has decreed.

Turning to the statute, section 15 is a provision relating to a hearing by the Tribunal:

"(1) Any party to a proceeding before the Board under section 13 who is aggrieved by the decision of the Board may, within fifteen days after he is served with the decision of the Board, mail or deliver to the Board and the Tribunal a notice in writing requiring a hearing by the Board.

(2) Any person to whom a notice is given under section 12 may require a hearing by the Tribunal by giving notice in accordance with subsection 1 notwithstanding that he has not first required a hearing by the Board.

(3) Where an applicant or holder of the licence or permit requires a hearing by the Tribunal in accordance with subsection 1, the Tribunal shall appoint a time for and hold the hearing and may by order confirm, alter or revoke the decision of the Board or direct the Board to take such action as the Tribunal considers the Board ought to take in accordance with this Act and the regulations, and for such purposes the Tribunal may substitute its opinion for that of the Board."

It is clear that this (Silver's) request does not come within the purview of either subsection 2 or subsection 3. Subsection 1 refers to "Any party to a proceeding before the Board under section 13 who is aggrieved by the decision of the Board..." There are several elements which have to be met with respect to the jurisdiction of the Tribunal to hold a hearing. The request must come 'from a party to a proceeding before the Board under section 13'; the proceeding is described as 'a proceeding before the Board under section 13'; and there is the added element of 'who is aggrieved'. The Tribunal is called upon in various applications before it to deal with the various elements related to in section 15 (1).

The position on behalf of the Board and on behalf of the Applicant for licence is that the Tribunal has no jurisdiction in that it is a precondition to the Tribunal's jurisdiction that there be a proceeding before the Board under section 13.

Section 13 in subsection (1) relates:

"Where the Board is required to hold a hearing under section 12..."

so attention must be directed to section 12 which states:

(1) Where the Board proposes:

- (a) to refuse to issue a licence or permit, renew a licence or approve the transfer of a licence;
- (b) to suspend or revoke a licence or permit; or
- (c) to attach terms and conditions to a licence or permit or to refuse to remove a term or condition of a licence or permit under section 10,

it shall serve notice of its proposal together with written reasons therefor on the applicant or holder of the licence or permit affected.

(3) A notice under subsection 1 shall inform the applicant or holder of the licence or permit that he is entitled to a hearing by the Board if he mails or delivers to the Board, within fifteen days after the notice under subsection 1 is served on him, notice in writing requiring a hearing by the Board and he may so require such a hearing."

It is clear that the three sections, section 12, 13 and 15 must be read together in the determination of the Tribunal's jurisdiction.

It is a fact that no notice of proposal meeting the requirements of section 12(1) has been issued. Accordingly, there was no hearing required under section 12 pursuant to section 13, and accordingly there has not been a proceeding before the Board under section 13.

It has been submitted on behalf of Mr. and Mrs. Silver that a notice of proposal to issue should be issued by the Board so that the resulting process set out in sections 13 and 15 should occur. That is a submission with respect to a lack of a provision in a governing section which this Tribunal is not empowered to provide. The legislature has been very explicit in its terminology with respect to the proceedings to be followed. It has not provided what has been submitted should be provided.

It was also submitted that the statute does not forbid the holding of an appeal. However, the statute has set out very clearly and very explicitly the requirements with respect to a public meeting, with respect to a hearing by the Board,

and with respect to the hearing by the Tribunal. The Tribunal cannot assume to itself powers which have not been provided for, where the powers which it does have have been clearly, explicitly and specifically set forth.

It has been submitted to the Tribunal that at the conclusion of the Board meeting on October 9th, it was represented that there was a right of appeal. The basic principle is that the Tribunal is bound by the provisions of the statute. The Liquor Licence Board of Ontario cannot confer jurisdiction upon the Tribunal; it is the legislature that confers jurisdiction upon the Tribunal. The Tribunal must take its powers and its authority must emanate from the statute.

There has been in fact a reference made to a "statutory" right of appeal. The issue has been referred to as an academic one. Although the issue is one which requires perhaps the study of the law, the matter is one of law, a matter of legal interpretation of the statute setting up the Tribunal and setting out its authority and powers. It is not a matter of the degree of objection which is before the Tribunal. The issue is one of the Tribunal's jurisdiction.

The Tribunal finds it has no jurisdiction to hold the hearing in the matter requested.

The ruling is the unanimous decision of the Tribunal.

The ruling and reasons therefor were orally given at the conclusion of the meeting by the Chairman in the presence of the two Members who concurred.

CHEATER'S TAVERN

APPEAL FROM A PROPOSAL OF THE LIQUOR
LICENCE BOARD TO ATTACH A TERM AND CONDITION
TO THE DINING LOUNGE LICENCE

TRIBUNAL: JOHN W. ERICKSON, Q.C., VICE-CHAIRMAN AS CHAIRMAN
BARBARA J. SHAND, MEMBER
GALE MCAULEY, MEMBER

COUNSEL: RONALD BIRKEN representing the Applicant
S.A. GRANNUM representing the Liquor Licence Board

HEARING July 21, 1981
DATE:

REASONS FOR DECISION AND ORDER

This is an appeal by Inspired Investments Ltd. from the order of the Liquor Licence Board of Ontario dated March 26, 1981 wherein the Board imposed a term and condition on the licensee by ordering that the sale of alcoholic beverages shall cease at 10:00 p.m. daily until compliance is achieved with Section 6(5)(a) of the Regulations of the Liquor Licence Act, 1975, as amended.

Counsel for the Board and the licensee were kind enough at the outset of the hearing to indicate that the only issue involved before the Tribunal is whether or not a so-called packaged sale of beer and a chicken wing constituted a sale of food pursuant to the provisions of the Act. There appears to be unanimity that if it did constitute a sale, then there was compliance with the Act. If it did not constitute a sale, then there was not compliance.

The licensee holds a Dining Lounge licence in the City of Toronto. The President of Inspired Investments Ltd. indicated that his establishment has always had live entertainment in the form of dancing girls and that at an early stage, the tavern found itself in difficulty with the fifty-fifty ratio of food to liquor required under the Regulations to the Act. The tavern's solution to the problem was to sell beer only in combination with a chicken wing and other kinds of food which were indicated in evidence to be sausages, pizza, pretzels and the like. In other words, beer cannot be purchased in the tavern separately.

At the time of the hearing before the Tribunal, other matters which may have concerned the Board in the past do not appear to be an issue and I'll deal with them briefly.

First, there appears to be no question but that there is a bona fide restaurant operation in existence, in terms of the equipment available, the stock of food and the menu selection. Second, there are printed menus and on the basis of the evidence before the Tribunal, the waitresses are instructed to advise the patrons of the package if the patron orders beer and also advise the patrons that other food selections from the menu are available. Third, there is table service for the food in compliance with section 8(4) of the Regulations. There was evidence given by investigators for the Board that in fact, table service was not being carried out by the tavern at the time of their investigation. This appears not to be the case at the time of this hearing. The Tribunal does not feel that this is an issue at this time and so finds. Lastly, food in the form of a chicken wing is served each time a bottle of beer or draft is served and the Tribunal finds that this evidence is uncontradicted.

There was some evidence from the Liquor Licence Board of Ontario staff indicating that, at times the food which was available with the package was not in fact served when beer was served. Mr. Woon San Back has indicated that the patrons have to take the chicken wings each time a bottle of beer or draft is purchased. He agreed that is the only way he can comply with the food/liquor ratio. It is fair to say that on his evidence, he recognizes that if he didn't sell beer with the package, then compliance would not be possible. He also testified by inference, and it is a finding of fact by the Tribunal, that the patrons come to his tavern for the primary purpose of watching the dancing girls and drinking beer. He further indicated that by selling through the package of a chicken wing and beer, as they did, that this approach has hurt other food sales.

Deborah Bayers, a witness and a waitress at the establishment, indicated that she feels the patrons felt the chicken wings were, in her words, free or gratuitous. She further gave evidence that in fact, menus were provided to the patrons and that food is served in the form of chicken wings with each bottle of beer.

The issue before the Tribunal in this hearing is whether there is a sale of food within the meaning of the Act. The Tribunal is of the view that a sale in its simplest terms is a free and willing bargain struck by the two parties to the

purchase and the sale. In this instance, on the basis of all the evidence, the Tribunal finds there is not a sale of food but a sale of beer with food added to accomplish a statutory goal, that is compliance with the Regulations to the Act. In form, the transaction may appear to be proper, but the Tribunal finds that in substance, it is merely an attempt to circumvent the provisions of the Act and Regulations and not a bona fide sale of food within the meaning of the Regulations and the Act. Mr. Birken agrees that there is not compliance with the Regulation if the Tribunal made such a finding.

The Tribunal in deciding the question of the disposition of this matter feels that there is evidence that perhaps the chicken wings may be an answer to the licensee's problem. The Tribunal makes this finding on the basis that evidence was adduced by the licensee that the chicken wings are becoming a popular food item in the tavern. Unfortunately, there was incomplete evidence given with respect to this aspect of the tavern's operations and additionally the Board chose to call no evidence to support its disposition of the matter with respect to the imposition of early closing hours. The Tribunal on the basis of the foregoing is not satisfied that early closing hours would be of any assistance at this stage to the applicant in achieving compliance with the Regulations.

On the basis of the evidence adduced before the Tribunal, the Tribunal is further of the view that the licensee is not complying with Section 6(17) of the Regulations to the Act. That Regulation states that the licensee must advertise the price or cost of beer separately and not as part of a package price with food. The Tribunal does not make this breach the foundation of its decision but basically has indicated the non-compliance with the Regulation by way of indicating an approach to the Tribunal's disposition of this matter. It is the Tribunal's view that only when the licensee has advertised the cost of beer and food separately in its package sale will it comply with Section 6(17) of the Regulations and only then will the appropriate figures be in front of the Board to allow it to deal with the issue of the fifty-fifty ratio food to liquor.

The Tribunal therefore directs the Board to advise the licensee to comply with section 6(17) of the Regulations. The regulation states that varieties must be posted (by menu or sign), that is to advertise the price of beer separately, as a separate item as required by the Regulations.

The Tribunal finds that the package deal of chicken wings and a beer is not a sale of food within the meaning of the Act as it is presently advertised.

The Tribunal revokes the decision of the Board which imposes a term and condition requiring a daily closing at 10:00 p.m. and directs the Board to monitor the licensed premises for a reasonable period of time to be determined by the Board, following the Board's directive to the licensee to comply with Section 6(17) of the Regulations and, if warranted, directs the Board to conduct a further hearing if compliance with Section 6(5)(a) of the Regulations is not achieved and directs the Board to take such action as the Board deems reasonable.

The above decision and reasons therefor were orally given at the conclusion of the hearing by the Chairman in the presence of the other two members who concurred.

CHICK 'N' DELI RESTAURANT

MEETING TO CONSIDER WHETHER LIQUOR LICENCE APPEAL
TRIBUNAL HAS JURISDICTION TO HOLD A HEARING WITH
RESPECT TO AN APPEAL FROM A DECISION OF THE
LIQUOR LICENCE BOARD BY MORRIS SILVER AND EDITH
SILVER

TRIBUNAL: JOHN YAREMKO, Q.C., CHAIRMAN
JOHN W. ERICKSON, Q.C. MEMBER
GORDON I. PURVIS, Q.C., MEMBER

COUNSEL: MORRIS SILVER and EDITH SILVER, in person

S.D. PATON, representing Chick 'N' Deli Ltd.
(Chick 'N' Deli Restaurant)

S. A. GRANNUM, representing Liquor Licence Board

REASONS FOR TRIBUNAL RULING

With respect to the request for a hearing in the
Chick 'N' Deli Restaurant application, the relevant facts are
similar to those in the Centennial College of Applied Arts and
Technology application. A difference is in the meeting
chairmanship. In this instance, the Tribunal notes that in the
determination of the issue before the Tribunal, it is not a
question of whether the request comes from immediate residents
or not.

Based on its decision in the Centennial College of
Applied Arts and Technology application, the Tribunal finds
that it has no jurisdiction to hold the hearing requested in
the matter.

The ruling is the unanimous decision of the Tribunal.

The ruling and reasons therefor were orally given at
the conclusion of the meeting by the Chairman in the presence
of the two Members who concurred.

CHRISTOPHER'S STEAK HOUSE RESTAURANT

APPEAL FROM A DECISION OF THE LIQUOR
LICENCE BOARD TO SUSPEND A DINING
LOUNGE LICENCE

TRIBUNAL: GORDON I. PURVIS, Q.C. VICE-CHAIRMAN AS CHAIRMAN
BARBARA J. HAND, MEMBER
KENNETH VAN HAMME, MEMBER

COUNSEL: DAVID F. LOGAN, representing Christopher's Steak
House Restaurant

S. A. GRANNUM, representing the Liquor Licence Board

HEARING

DATE: March 18, 1981

REASONS FOR DECISION AND ORDER

This Hearing was preceded by a meeting held to determine initially whether or not the Tribunal had jurisdiction to hold a Hearing in this matter.

By way of argument Counsel for the Board maintained that, at the Board Hearing of November 18, 1980, the Licensee had agreed to the Decision of Suspension rendered, and, under these circumstances, he cannot now appeal, because he is not a person 'aggrieved' by the Decision of the Board within the meaning of Section 15(1) of the Liquor Licence Act. Reference also is made to Section 4 of the Statutory Powers Procedure Act. It was further contended that the right of appeal, existing by Statute, calls upon the person appealing to comply strictly with the conditions for appeal as laid down in the Statute. In this instance the Licensee must be a person 'aggrieved' and must, as in Court proceedings where a person pleads guilty and subsequently wishes to appeal his conviction, demonstrate that he misunderstood the effect of a guilty plea or was induced by someone in authority to plead guilty.

In argument Counsel for the Licensee contended that, during the Board Hearing, the latter never agreed to a period of suspension nor forfeited any right to appeal the Decision. The Licensee, corroborated by the evidence of one of his employees, both of whom were present at the Board Hearing, then gave evidence maintaining that at no time did he agree to a suspension, but on the contrary it was always his intention to appeal.

The Tribunal finds on the evidence and argument that there was some doubt in the mind of the Licensee as to the result of the Board Hearing, and that he misunderstood the effect of what had transpired at that time and actually did intend to appeal any suspension of his Licence.

Under the circumstances the Tribunal finds and rules that the Licensee is a person 'aggrieved' by the Decision of the Board within the meaning of Section 15(1) of the Liquor Licence Act, and is entitled to a Hearing which the Tribunal has jurisdiction to hold.

At the conclusion of the Meeting this ruling and reasons were given orally by the Chairman in the presence of the two members who concurred.

On the 14th day of November, 1979, the Board issued a Notice of Proposal pursuant to the Liquor Licence Act S.O. 1975, C.40, Sec. 11(3), to SUSPEND for a period of thirty (30) days the liquor licence(s) held by Stauros Christopher Smartgis for the above establishment for the following reasons:

1. The Licenceholder is the owner of premises classified as a Restaurant and known as Christopher's Steak House Restaurant, Mississauga. The Licenceholder holds a Dining Lounge Licence No. 020707 in respect of a room located on the main floor, north section of the said premises and having a capacity of 200 persons.
2. On Tuesday, September 4th, 1979, two waitresses were employed in the sale and service of liquor to patrons of the licensed premises and at approximately 9:30 p.m. three male persons, two of whom were apparently under the age of 19 years, entered the premises and were served beer by one of the waitresses.
3. At approximately 11:00 p.m. on the same date, a male person seated in the premises was in an apparently intoxicated condition after consuming numerous bottles of beer and staggered while walking to the washroom. Upon his return to the premises, the said person was served beer by one of the waitresses.
4. At approximately 12:15 a.m., two persons apparently under the age of 19 years entered the premises, sat on the east side thereof and were served liquor by one of the waitresses. Neither of the said persons was asked for identification prior to being served.

5. On Wednesday, September 5th, 1979 at approximately 10:00 p.m., two male persons apparently under the age of 19 years were seated on the west side of the licensed premises and were sold and supplied beer on two occasions by one of the waitresses. No request for identification of the said persons was made.

6. On Thursday, September 6th, 1979 at approximately 9:15 p.m., three male persons were present on the licensed premises whose conduct was loud and boisterous and who were in an apparently intoxicated condition but were continually sold and supplied liquor by the waitress.

7. On the same date at 9:30 p.m., seven male persons, all of whom were apparently under the age of 19 years, entered the licensed premises and were served liquor by one of the waitresses. Three of the said persons were confirmed later to be under the age of 19 years, namely James BECK, born September 7, 1961; Robert WILSON, born October 3, 1961; and Carl LUSH, born July 3, 1962.

At approximately 8:30 p.m. on Friday, September 7, 1979, there were present on the licensed premises approximately 150 persons. Only two waitresses were employed in the sale and service of liquor and, in addition to several persons who were in an apparently intoxicated condition, the following persons who were apparently under the age of 19 years were sold and supplied liquor, namely David WILLIAMS, born July 25, 1962; Richard MATLASHEWSKI, born September 1, 1962; Mark DENNIS, born October 17, 1962; Nazim MOHAMMED, born July 28, 1961.

9. On Wednesday, September 12, 1979 at approximately 10:00 p.m., one Jeffrey LADOUCEUR, Born March 17, 1961, and a person apparently under the age of 19 years was sold and supplied liquor by one of the waitresses and was not requested to produce identification.

10. The licenceholder has carried on activities that are contrary to the regulations in that:

- i) Contrary to Section 5 subsection (4) of the Regulations under the Liquor Licence Act, he permitted drunkenness to take place on the licensed premises; and
- ii) Contrary to Section 5 subsection (5a), he failed to ensure that evidence as to the age of the persons apparently under the age of 19 years was obtained prior to serving liquor to the said persons.

After a Hearing on November 18th, 1980, to consider its 'Proposal' to SUSPEND for a period of thirty (30) days the liquor licence issued in respect of Christopher's Steak House Restaurant, the Board found that the Licensee is in breach of a term and condition of his liquor licence in that he has carried on activities that are in contravention of the Act and Regulations appurtenant thereto, particulars of which are set forth in the aforesaid 'Notice of Proposal'.

"The Board, therefore, ORDERS that its 'Proposal' be carried out and, with the agreement of the Licensee, the period of "SUSPENSION" will commence at the opening hour on THURSDAY, JANUARY 8th, 1981, and continue in effect until the opening hour on MONDAY, FEBRUARY 9th, 1981.

Moreover, the Board recommends that only a 'Photo' card be acceptable by this establishment as proof of age of persons of questionable years."

The Licensee requested a Hearing by the Tribunal. At this Hearing evidence was presented to the Tribunal substantiating the allegations contained in the Notice of Proposal, and the record contains certificates of conviction in the Provincial Court against:

- i) The licenceholder Stauros Christopher Smartgis
- ii) His employees, Lorna Ferrente, Rose Anne Didur, and Jennifer Rakovalis, and
- iii) The following persons frequenting the establishment - Daniel Robert Bennett, David John Arsenau, James Joseph Beck, Richard Matlashewski, Mark James Dennis, David Sidney Williams, Nazim Mohammed, Jeffrey Francis Ladouceur.

The persons included in group (iii) above, were all convicted under Section 45 (3) of the Liquor Licence Act - "no person under the age of 19 years shall have, consume, attempt to purchase, purchase or otherwise obtain liquor", for offences occurring on September 4, 6, 7, 8, and 12, 1979.

The employees included in group (ii) above, were all convicted either under Section 44 of the Liquor Licence Act - "no persons shall sell or supply liquor or permit liquor to be sold or supplied to any person in or apparently in an intoxicated condition;

Or under Section 45 (2) - "no person shall sell or supply liquor to a person who is apparently under the age of 19 years, and in any prosecution for a contravention of this subsection the Justice shall determine from the appearance of such person and other relevant circumstances whether he is apparently under the age of 19 years",

- For offences occurring on September 4, 5, 6 and 7, 1979.

The Licenceholder Stauros Christopher Smartgis, also was convicted in Provincial Court under Sections 44 and 45(2) for offences occurring on September 6 and 7, 1979. Certificates covering these offences are contained in the record and were further confirmed by evidence given at the Tribunal Hearing by members of the Peel Regional Police.

Based on the evidence presented to it, the Tribunal finds that the allegations contained in the Notice of Proposal have been proved, and finds in particular that the Licensee and his employees did, on September 6th, 1979, sell liquor to persons apparently in an intoxicated condition, contrary to Section 44 of the Liquor Licence Act, and did, on September 7th, 1979, sell liquor to persons apparently under the age of 19 years, contrary to Section 45(2) of the Act.

Counsel for the Licenceholder submitted that the Board's proposed thirty (30) day suspension was excessive under the circumstances. The Tribunal cannot agree with this submission in view of the provisions of Section 55(1a) of the Act which provides:

"In addition to any other penalty or action under this Act, the Licence of any person who contravenes subsection (2) of Section 45, shall be suspended for a period of not less than seven (7) days".

In this instance the Licensee was not only convicted under Section 45 (2) calling for a 7 day suspension, but also under Section 44, which would justify a further period of suspension. Furthermore the certificates of conviction show that at least eight (8) under age persons were involved and conceivably each conviction concerning these could result in additional periods of suspension. The Tribunal is therefore of the opinion that it should not interfere with the Decision of the Board as to length of suspension unless there is some reason which calls for an alteration. The Tribunal finds that no such reason exists.

The Tribunal hereby confirms the Decision of the Liquor Licence Board of November 18th, 1980, and directs the Board to set the commencement and termination of the said period of suspension.

ELMWOOD TAVERN

APPEAL FROM AN ORDER OF THE LIQUOR LICENCE
BOARD TO SUSPEND A DINING LOUNGE LICENCE

TRIBUNAL: GORDON I. PURVIS, Q.C., VICE-CHAIRMAN AS CHAIRMAN
KENNETH VAN HAMME, MEMBER
JACK SIM, MEMBER

COUNSEL: HART M. ROSSMAN, representing Charles Triantos,
Licensee of the Elmwood Tavern

S. A. GRANNUM, representing the Liquor Licence Board

HEARING

DATE: October 22, 1981

REASONS FOR DECISION AND ORDER

The Licensee is the holder of a Dining Lounge Licence No. 091551 for the establishment known as Elmwood Tavern, 985 Bloor Street West, Toronto, Ontario. The Licenceholder acquired the liquor licence in May 1974 and has operated the premises under the licence since that date.

The licensed premises consist of two areas, one located on the Main Floor having a capacity of 35 persons, and an upstairs lounge on the Second Floor having a capacity of 95 persons.

On March 23, 1981, the Liquor Licence Board issued a Notice of Proposal "to suspend for a period of seven (7) days the Dining Lounge Licence of the Licensee because the past conduct of the Licensee affords reasonable grounds for belief that his business has not been, and will not be carried on in accordance with law. Particulars of said past conduct are:

- a) On Sunday, December 21, 1980, at 10:45 p.m. there were 20 patrons in the Second Floor licensed premises consuming alcoholic beverages, contrary to Section 6 (20) of The Regulations under the Liquor Licence Act;
- b) On July 12, 1977, the Board suspended for a period of seven (7) days the Dining Lounge Licence of the Licensee."

At a Hearing held before the Liquor Licence Board on June 25, 1981, to consider its proposal, the Board found that the Licenceholder had carried on activities contrary to the Act and Regulations as set forth in the Notice of Proposal and issued its Decision as follows:

"The Board orders that the 'Dining Lounge' Licence issued to Charles Triantos, in respect of the said premises, be "Suspended" for two consecutive Sundays, more particularly, from the opening hour on Sunday, July 12, 1981 to the opening hour on Monday, July 13, 1981, and from the opening hour on Sunday, July 19, 1981, to the opening hour on Monday, July 20, 1981."

As a result of this Decision, the Licensee requested a Hearing before the Tribunal.

At the outset, Counsel for the Board and the Licensee agreed that the material facts, as set out in the Secretary's Minutes of the Board Hearing being Exhibit 6, were correct, and these may therefore be summarized as follows:

On Sunday, December 21, 1980, Constable Douglas Roy Buchanan of The Metropolitan Toronto Police, together with another officer, conducted a routine check of the establishment at 10:45 p.m. and found everything in order in the First Floor area, which was being supervised by the Licenceholder, Charles Triantos. Nevertheless they found in the Second Floor Dining Lounge that the door was locked, and on gaining entry, they observed that a band was playing and, contrary to Section 6(20) of the Regulations, bottles of beer and glasses containing beer were still on the tables and approximately twenty patrons were still there consuming beer. The supervision of the Second Floor Lounge had been delegated by the Licensee, Charles Triantos, to an employee, P. Tourikis. Charges subsequently were laid against the Licenceholder and his employee, under Section 6(20) of the Regulations, and at a Provincial Court Hearing, the latter was convicted and fined, while the former was acquitted. After the charges were laid, the Licenceholder dismissed his employee.

In his summation, Mr. Grannum maintained that the evidence given showed that there was clearly a breach of Section 6(20) of the Regulations, and that, under the circumstances, the Board had imposed a very lenient penalty, citing as reasons the fact that it was the Sunday before Christmas, and, at the time of the occurrence, the establishment was short-staffed.

Counsel for the Licenceholder, Mr. Rossman, in arguing against the severity of the Board's penalty, urged the Tribunal to consider the question as to whether or not Mr. Triantos as Licensee had done everything he reasonably could be expected to do under all the circumstances to avoid the events which occurred. Mr. Rossman cited for the Tribunal's consideration a case in the Provincial Court in which he was personally involved as Counsel, being Her Majesty the Queen v. George Petsoulas, 1978, 40 CAN C.R.C. 355 a Judgement of His Honour Judge C. Scullion delivered October 5th, 1978. Very briefly the Licenceholder in that case was charged with violating Section 6(20) of the Regulations, but in this instance he had personally checked the premises to make certain that all evidence of service and consumption had been removed and had no knowledge that a customer subsequently returned and retrieved glasses of beer, and the Police Constable found on his inspection drinking still going on. In this case, Judge Scullion determined that the Licenceholder had used all due diligence and exercised reasonable care to comply with the regulation and dismissed the charge.

On the contrary, the Tribunal is of the opinion, as was the Board, that Mr. Triantos, as Proprietor, should have been more attentive to actually ensuring that the establishment was properly closed, and must assume responsibility for the actions of his employee in complying with the Act and Regulations in all its aspects. The routine for the proper closing of an establishment should be built into the operation. It is a mandatory condition of operating licensed premises. Staff can fail, and the ultimate responsibility for such failure rests with the Proprietor.

The Tribunal finds therefore that the Licensee was in breach of the Term and Condition of his Licence, in that, contrary to Section 6 (20) of Regulation 1008/75 under the Liquor Licence Act, the Licensee did not ensure that all evidence of the service and consumption of liquor had been removed within the time prescribed in the above Section.

The Liquor Licence Appeal Tribunal hereby alters the Decision of the Liquor Licence Board dated the 25th day of June, 1981, and directs that the Dining Lounge Licence issued to Charles Triantos be suspended for one (1) day from the opening hour Sunday, to the opening hour Monday, the date of such suspension to be determined by the Liquor Licence Board.

FRANKLIN TAVERN

APPEAL FROM A DECISION OF THE LIQUOR LICENCE
BOARD TO SUSPEND A LOUNGE LICENCE

TRIBUNAL: GORDON I. PURVIS, Q.C., VICE-CHAIRMAN AS CHAIRMAN
BARBARA J. SHAND, MEMBER
M. GALE McAULEY, MEMBER

COUNSEL: KEITH G. PEDWELL representing the Applicant
S. A. GRANNUM representing the Liquor Licence Board

HEARING

DATE: June 23, 1981

REASONS FOR DECISION AND ORDER

The Licenceholder is a corporation, 380873 Ontario Limited and is a holder of Lounge Licence No. 091033 issued in respect of Franklin Tavern located at 155 St. Paul Crescent, St. Catharines, Ontario. The location of the licensed premises is the main floor of a two-storey building consisting of three areas having capacities of 32, 110 and 132 persons.

The officers and directors of the licensee corporation are:

Thomas Van Bridger
June Van Bridger

Michael Van Bridger, son of the officers and directors of the Licenceholder, was employed in the licensed premises as a Supervisor and Bartender.

On the 30th day of December, 1980, the Liquor Licence Board issued a Notice of Proposal to revoke the Liquor Licence held for the establishment for the following reasons:

"No. 6. The Board proposes to revoke, pursuant to Section 11(3) of the Liquor Licence Act, the Liquor Licence of the Licenceholder because past conduct of Thomas Van Bridger, an officer of the licensee corporation affords reasonable grounds for the belief that its business has not and will not be carried on in accordance with the law. Particulars of the said past conduct are that the said Thomas Van Bridger was

on the 29th of May, 1978, convicted in Provincial Court of obstructing a police officer and driving while impaired, and on the 19th day of November, 1980, was convicted of common assault.

No. 7. Contrary to Section 5(11) of the Regulations under the Liquor Licence Act, the Licenceholder failed to appoint a person as Manager and Supervisor of the licensed premises who was capable of managing an efficient operation. Michael J. Van Bridger, Supervisor of the licensed premises, was on the 7th of May, 1980, convicted of assault, and on the 19th of November, 1980, convicted of assault causing bodily harm.'

After a Hearing on March 3rd, 1981, to consider the above proposal, the Board rendered the following decision:

"The Liquor Licence Board finds that the Licenceholder is in breach of a Term and Condition of its 'Licence' in that it has carried on activities that are in contravention of the aforesaid Act and Regulations appurtenant thereto, the particulars of which are set forth in the aforementioned 'Notice of Proposal'.

The Board, however, instead of carrying out its 'Proposal' to "revoke" the Liquor Licence of the Franklin Tavern, orders that the 'Lounge' Licence issued to 380873 Ontario Limited, in respect of the Franklin Tavern be 'suspended', commencing at the opening hour on Monday, March 23rd, 1981, and to continue until such time as an Application for Transfer of the Licence of this establishment to a purchaser acceptable to the Board has been submitted and given approval.

If, as, and when such an Application for Transfer is presented to the Board, for consideration and, providing same is satisfactory, the matter of the reinstatement of this Licence will be taken under review."

In Exhibit 6, being the Secretary's Minutes of the Board Hearing, it was indicated that the Board's original proposal to revoke this Licence was changed to a period of suspension, as referred to above, because consideration was given to the Licensee's investment in the operation. In June 1978 when the Licensee acquired the premises this investment was valued at \$435,000.00.

At the Tribunal Hearing Police Constable Marcel Van Ruyven of Niagara Regional Police gave evidence relating to events which took place at the Franklin Tavern on March 2nd, 1980. He described in detail arriving and finding several injured persons in the parking lot outside the establishment, some bleeding profusely, and each complaining of having been assaulted by the principal of the licensee corporation, Thomas Van Bridger, or by his son, Michael Van Bridger. In each instance the weapon used was a 'billy' described as a 'long, wooden, homemade bat', two of them being kept on the premises by the Licensee.

As a result of the above occurrences, Thomas Van Bridger and Michael Van Bridger were charged and convicted in Provincial Court on November 19th, 1980, the former on two counts of 'common assault' for which he received fines of \$200.00 each, and the latter on two counts of 'assault causing bodily harm' for which he received a penalty of six months imprisonment. The record of the Board's proceedings (Exhibit 5) on pages 17a and 17b reflect the above fines and penalty.

The Board's inspector, Allan Derbyshire, testified that in his opinion this establishment which is located by itself in a working man's area, does not attract the best of clientele, but generally is a pretty fair operation. The happenings of March 2nd, 1980, appear to him to be the only serious events occurring in the last two years.

The Licenceholder, Thomas Van Bridger, gave his version of what transpired on March 2nd, 1980, indicating that as a result of being provoked by persons in the establishment, including a member of the band, and in order to clear the premises and to repulse his attackers, he and his son, Michael Van Bridger, had to resort to the use of "billies".

On the evidence submitted the Tribunal finds that the Licenceholder has been in breach of the provisions of the Liquor Licence Act and its Regulations, in that 'the past conduct of the principal of the licensee corporation affords reasonable grounds for the belief that its business has not and will not be carried on in accordance with the law'.

Section 5(11) of the Regulations to the Liquor Licence Act stipulates as follows:

"Every licensed premises shall be under the management and supervision of a person who has experience in the food and beverage industry such that he is capable of managing an orderly and efficient operation."

In this instance the Licenceholder entrusted the orderliness and efficiency of the operation to his son as supervisor and bartender with the rather drastic results as outlined above. The Tribunal therefore finds the Licenceholder in breach of the above section of the Regulations.

At both the Board and Tribunal Hearings the Licenceholder himself, or through his Counsel, has reiterated his intention to negotiate a sale of the business, and with this decision the Tribunal agrees. Therefore, to facilitate such a proposed sale of the business as a going concern, the Tribunal renders the following decision:

The Tribunal hereby revokes the Decision of the Liquor Licence Board of March 3rd, 1981, and hereby ORDERS that the 'Lounge' Licence issued to 380873 Ontario Limited be 'Suspended' for a period of Seven (7) days, the effective date of the suspension to be set by the Board, and provided that, in the Board's opinion, Section 5 (11) of the Regulations to the Act are complied with.

G. & G. RESTAURANT
(JOANNA SOFRAS)

APPEAL FROM A PROPOSAL OF THE LIQUOR LICENCE BOARD
TO SUSPEND THE DINING LOUNGE LICENCE

TRIBUNAL JOHN ERICKSON, Q.C., VICE-CHAIRMAN AS CHAIRMAN
GALE McAULEY, MEMBER
KENNETH VANHAMME, MEMBER

COUNSEL DAVID M. ROVAN, representing the Applicant
S. A. GRANNUM, representing the Liquor Licence Board

HEARING
DATE December 2nd, 1981

REASONS FOR DECISION AND ORDER

BY VIRTUE OF THE AUTHORITY vested in it under the Liquor Licence Act, the Liquor Licence Appeal Tribunal hereby confirms the order of the Liquor Licence Board dated the 10th day of September, 1981, and orders that the suspension take effect at the opening hour on Monday, January 4th, 1982, and to continue until the opening hour on Thursday, January 7th, 1982.

GALAXY 2000 RESTAURANT

APPEAL FROM A DECISION OF THE LIQUOR LICENCE
BOARD TO ISSUE A DINING LOUNGE LICENCE

TRIBUNAL: JOHN YAREMKO, Q.C. CHAIRMAN
GORDON I. PURVIS, Q.C., MEMBER
KENNETH VAN HAMME, MEMBER

COUNSEL: D. TRINAISTICH representing Lancia Tile Limited
et al

W. G. DINGWALL representing Galaxy 2000 Catering
Ltd.

S. A. GRANNUM representing the Liquor Licence
Board

HEARING
DATE: April 1, 1981

REASONS FOR DECISION AND ORDER

Galaxy 2000 Catering Ltd., herein referred to as applicant, is the applicant for a dining lounge licence in respect of an establishment known as Galaxy 2000 Restaurant situated at premises 30 Pemican Court, Weston.

In the application, Antonio (Anthony-Tony) Sansone is shown as a director and the President of the applicant holding 5 common shares and 5 preferred shares, and Lucia (Lucy) Sansone as a director and secretary holding 5 common shares and 5 preferred shares.

The registered owner of the premises is 438959 Ontario Limited, herein referred to as owner, of which the officers and director are Joseph (Joe) Sansone and Lucia Sansone. Antonio Sansone is the father of Joe Sansone and husband of Lucia (Lucy) Sansone. It is clear that the total business operation through corporations has been and is that of a family.

The restaurant area is within a total structure which also houses a banquet hall; the restaurant area is under a lease by the applicant from the owner for a term expiring in the year 2000.

The Total structure was built under the terms of a contract between the owner and 4433462 Ontario Inc., operating as Eden Valley Construction, herein referred to as general

contractor. The construction contract for the complete structure was at a contract price of \$485,000. One Paul Muia was the sole officer and director of the general contractor.

Upon the completion of the construction, the general contractor defaulted in payment to subcontractors inclusive of the appellants, and mechanics liens have been filed against the lands for sums exceeding \$600,000.

The Liquor Licence Board held a hearing on the 5th day of January, 1981 (originally scheduled for the 3rd of December 1980) pursuant to a notice of Proposal to refuse the licence upon receipt of a letter from one Nino Renzetti (Exhibit 5 (1)). The letter referred to the construction contract and stated:

"It is also my understanding that in order to succeed and to obtain an Application for a Liquor Licence from your Board, an Applicant must be of good character and reputation and have a satisfactory business record.

I would like to bring to your attention that there is serious doubt as to the good character and business record of Mr. Sansone.

.....

Before granting this banquet hall a Liquor Licence, investigate completely the allegations that have been made and be sure of the financial stability and good business character of the operators of this banquet hall.

I should also bring to your attention the fact that for the past several weeks, this banquet hall is being operated in total contravention of the applicable municipal by-laws."

Information had also been received by the Board from Hudson Electric Limited another of the appellants about a claim filed.

The Notice of Proposal was to refuse the issuance of a licence because "having regard to its financial position, the applicant cannot reasonably be expected to be financially responsible in the conduct of the business." Notice of the Hearing was given to certain parties subsequently designated by the Tribunal as parties, now named as appellants herein.

At a hearing that followed no evidence was adduced as to past conduct relevant to Section 6 (1) (c) (ii). At the conclusion of the hearing the Board issued a decision to issue the licence.

As the basis for the request for the Tribunal hearing, as stated at the outset of the hearing, the appellants now maintain that the applicant is disentitled to the licence by virtue of the exception in the Liquor Licence Act, Section 6 (1) (c), which provides:

- "(c) the applicant is a corporation and,
- (ii) the past conduct of its officers or directors or of a shareholder who owns or controls 10 per cent or more of its issued and outstanding equity shares as determined under Section 20 affords reasonable grounds for belief that its business will not be carried on in accordance with law and with integrity and honesty"

The Tribunal finds that Nino Renzetti was engaged by the appellants to try to bring about a payment in full of their claims by whatever means possible, including delay and/or refusal of the issuance of a licence and rezoning. Acting on behalf of the appellants generally and Polvian Construction Limited in particular, Renzetti was in the main instrumental in the Notice of Proposal being issued by the Board to refuse. Renzetti had communicated on the 30th of October 1980 with the Board following the public meeting of the Board on October 9th, 1980 at which no objection had been raised.

During the course of the application for licence, the owner filed an application for rezoning in order to enable the operation of the banquet hall to be in conformity with the zoning bylaws; the operation of the restaurant being in conformity. The building permit which had been applied for and issued was not in respect of the building (inclusive of a Banquet Hall) which was constructed, but would cover a restaurant. Mr. Renzetti advised the Planning Board of North York of the default in payments and submitted that it would be inappropriate to make the zoning change.

The Tribunal finds that on or about the 12th day of December, 1980, Antonio Sansone paid to Nino Renzetti, the sum of \$5,000 in cash and executed a promissory note in favour of one Dominic Faga in the sum of \$22,500. Dominic Faga has acted as agent and authorized signing officer for Polvian Construction Limited, one of the mechanic lien holders and plaintiff in the action against the owner and certain other defendants.

It was understood by Antonio Sansone that by reason of the payment and the promissory note, Renzetti would withdraw objections before the Liquor Licence Board and the council of North York, and would settle the matter of the mechanic's lien claims. This he failed to do.

The application for the licence herein dated the 22nd day of July 1980 (Exhibit 7) was replaced by an application dated the 3rd day of September 1980 (Exhibit 8). The applicant sets forth the directors of the applicant as set out above namely, Antonio Sansone and Lucia Sansone. During the course of his testimony Antonio Sansone stated that he was the sole shareholder of the corporation. The Tribunal finds this to be a misunderstanding of the arrangements of the corporate structure set up by his solicitor. The certificate of record with the Ministry of Consumer and Commercial Relations respecting the corporation shows the original incorporators still as such. The Tribunal finds the filing of the change is an oversight in respect of the organization of the corporation.

The Tribunal finds Antonio Sansone, together with Joseph Sansone, was for some time after the year 1964, in the grocery business as director and officer of Sansone and Sons Supermarkets Limited. Sansone and Sons Supermarkets Limited engaged the services of Disposal Services Ltd. for the removal of refuse, and upon its failure to pay an account, judgement was obtained and a writ of execution filed in respect of Sansone and Sons Supermarkets Limited in the sum of \$628.31.

The Tribunal finds that the applicant is indebted to Coolbreeze Air Conditioning and Heating Limited for some \$2,000.00 for kitchen hoods supplied, one in the restaurant and one in the banquet hall; finds further that the reason for nonpayment is a dispute by the applicant with respect to payment by reason of certain action on the part of Coolbreeze as represented by one Anthony Della Penna, which the applicant maintains created difficulty and expense on the part of the applicant.

One Victor DiGirolamo, the President of Better Iron Works, a mechanic lien holder, gave his opinion that the cost of the structure should be in the neighbourhood of \$725,000.00 and that the same could not be built for the sum of \$525,000.00 which at one time he believed to be the contract price, and that he had so advised Antonio Sansone. The Tribunal notes that in spite of his belief that the contract could not be fulfilled for the contract price, he accepted a mechanical subcontract under which a certain sum was paid and in respect of which there has been filed a mechanic's lien. The Tribunal notes that Victor DiGirolamo was supportive of Antonio Sansone

in negotiations before a mortgage broker with respect to a mortgage loan prior to the completion of the structure and contract.

One Joseph Alessandro, a builder of some experience in various fields, testified that he would have been able to build a bare structure of comparable size for the sum of \$300,000.00 which would leave him \$185,000.00 available to finishing in accordance with the requirements of the restaurant-banquet hall facility. Mr. Alessandro had confidence in Mr. Sansone to the extent that he loaned him money by way of a second mortgage to the lands and was prepared to loan him additional funds. He expressed his opinion that the character of Antonio Sansone was 'of the best', based upon contact with some of the public that had dealings with Sansone.

The Tribunal finds that the owner has paid some \$400,000.00, has withheld the statutory percentage of 15% and is ready, willing and able to pay the same in accordance with the determination of the Court as to the persons entitled thereto upon the completion of a mechanic's lien action presently in process.

Alessandro testified that he had granted permission for a sign to be erected on his property with respect to Galaxy Dining Lounge and that part referring to the Liquor Licence Board had been covered up, but that the covering was torn down regularly exposing the words.

Upon a certificate with respect thereto filed as Exhibit 24, the Tribunal finds that Antonio Sansone and Lucia Sansone were each convicted in 1975 of an offence under the Income Tax Act related to a failure to declare certain income and thereby evading the payment of taxes contrary to Section 239(1)(d).

The hereinbefore findings by the Tribunal are based on evidence adduced on behalf of the appellants and the applicant.

In the matter of delinquency in the corporate filing, and the variance of the oral testimony, with the corporate description in the application, the Tribunal is accepting Antonio Sansone's misunderstanding. In the matter of the offences under the Income Tax Act, the Tribunal without more details than are set out in the certificate of conviction is of the opinion that the conviction in itself does not constitute a bar to the applicant being licenced.

The Tribunal's evaluation of the hereinbefore findings individually and in toto lead it to a conclusion that under the circumstances, the applicant did not thereby come within the exception of Section 6 (c)(ii).

After the submission of the above evidence by the appellants and applicant, the solicitor for the Board, also a respondent, placed before the Tribunal as an Exhibit (#25), a Personal History Report of Antonio Sansone filed with the Board in conjunction with the application for licence.

The Personal History Report has the following question which was answered by a mark within the 'no' box thusly:

"(12) Have you ever been convicted of any offense under the laws of Canada or any province of Canada, or are there any charges currently before the courts?

Yes No X If yes, give details indicated below.

<u>Date</u>	<u>Charge</u>	<u>Disposition</u>	<u>Place</u>
<u> </u>	<u> </u>	<u> </u>	<u> </u>
<u> </u>	<u> </u>	<u> </u>	<u> </u>

(Violations under the Highway Traffic Act excluded)"

It is to be noted that the Report has as a part thereof, a Statutory Declaration as follows:

STATUTORY DECLARATION

"I ANTONIO SANSONE do solemnly declare that the information furnished by me as hereinbefore set out is true and acknowledge that the falsification or withholding of any information may be just cause for refusal to grant or renew a licence to sell liquor in Ontario. I make this solemn declaration conscientiously believing it to be true and knowing that it is of the same force and effect as if made under oath and by virtue of the Canada Evidence Act.

SIGNATURE "Antonio Sansone"

DATE "September 2, 1980"

Declared before me at the
City of Toronto
In the Municipality of Metropolitan Toronto
this 2nd day of September, 1980.

(Signature illegible)

Signature of Public Notary, Commissioner of Justice of the Peace"

As hereinbefore set out, the hearing before the Board was devoted completely to the question of financial responsibility for a determination whether entitlement came within the exception Section 6(1) (c) (i):

"the applicant is a corporation and,

- (i) having regard to its financial position, it cannot reasonably be expected to be financially responsible in the conduct of its business"

as set out in the Notice of Proposal.

No evidence was adduced before the Board as to the 'past conduct' and in particular, no evidence regarding the Income Tax offences; and the Board was not alerted to such as it may have been if an affirmative answer to question 12, and details had been given. A records report by Metropolitan Toronto Police, Morality Bureau, states "No adverse information on file."

The Tribunal is of the opinion that the matter, as submitted by the solicitor for the Board as an alternative, should be referred back to the Board for a hearing to determine whether the falsification of the information within the Personal History Report, namely the answer 'no' to question 12 is such past conduct of Antonio Sansone, an officer, director and shareholder of the applicant corporation, as affords reasonable grounds for belief that its business will not be carried on in accordance with law and with integrity and honesty.

The Tribunal is cognizant that it has the power to make such determination. However, it is the opinion of the Tribunal that in this first instance of a matter which is a significant part of the administrative function of the Board the matter be referred back to the Board.

In addition, there is the aspect that the matter had arisen immediately prior to the conclusion of the hearing in such a manner (not deliberate) that the applicant would have had no notice of it arising as an issue.

The Tribunal revokes the decision of the Board dated the 5th day of January, 1981 and directs the Board to hold a hearing to determine whether the applicant is disentitled to a licence by reason of coming within the exception of Section 6 (1) (c) (ii) by virtue of the falsification of information

within the Personal History Report of Antonio Sansone, and if the Board decides that the applicant is not so disentitled to issue the said licence.

HITCH'N'POST RESTAURANT

APPEAL FROM A PROPOSAL OF THE LIQUOR LICENCE
BOARD TO ATTACH A TERM AND CONDITION TO THE
DINING LOUNGE LICENCE

TRIBUNAL: JOHN W. ERICKSON, Q.C., VICE-CHAIRMAN AS CHAIRMAN
KENNETH VANHAMME, MEMBER
BARBARA J. SHAND, MEMBER

COUNSEL: JOSEPH KARAM, acting as its agent

S.A. GRANNUM, representing the Liquor Licence Board

HEARING

DATE: September 1st, 1981

REASONS FOR DECISION AND ORDER

This is an appeal from the Decision of the Liquor Licence Board dated July 2, 1981 wherein the Board attached a Term and Condition to the licence of 462029 Ontario Limited, otherwise known as Hitch'N'Post Restaurant. At the outset it was indicated to us by Mr. Grannum and by Mr. Newberry appearing as agent for Mr. Karam that the major issue related to keeping or the production of books, records, and/or daily sales records pursuant to the Liquor Licence Act. In the original Notice of Proposal issued to the licensee, other suggestions or allegations were contained which in the Tribunal's opinion do not form a basis for any part of this decision and the Tribunal indicates that it does not rest any portion of its decision on any allegations other than books, records and the keeping of the same and non-compliance with Section 6(5) of the Regulations to the Act.

Evidence was called by the Board through Mr. Holubko, the investigator, and Inspector Hayes. That evidence indicated that numerous requests had been made to Mr. Karam, an officer and shareholder of the licensee, to produce for inspection, books and records which are required to be kept pursuant to the regulations and more particularly Section 5 paragraph 31. Mr. Karam, for his part, indicated that there may have been some difference of opinion as to the nature of the request and in his evidence indicated that he did have daily records of the sales behind the bar and that they are available.

The issue facing the Tribunal basically resolves itself around one of credibility. It is apparent that the Board felt that the figures indicating sales of liquor and food filed with the Board were unreliable, given the inspection report of the investigator and the reports filed by the inspector. Mr. Karam, for his part, has taken the position that the figures are reliable. The Tribunal, on the basis of the evidence of the investigator and the evidence of the inspector, prefers the evidence of the Board to that of Mr. Karam. The basis for so saying should be set out.

It is the Tribunal's view that Mr. Karam in is evidence supported Mr. Holubko in his opinion and conclusion that there was evasiveness shown when requests were made for the production of certain records. It is the opinion of the Tribunal as well that Mr. Karam, through his demeanor in the witness box and other acts since the beginning or the inception of these proceedings, supported the opinions and conclusions of the inspector, wherein she indicated that she had made the requests as well to Mr. Karam. Mr. Karam was himself directly questioned as to the reason for non-production of the books or records and/or daily sales journal and, in the opinion of the Tribunal, gave answers which, to put it charitably, were unsatisfactory. It is therefore the opinion of the Tribunal that there has been a clear breach of the obligation on the part of this licensee to keep proper books, records and/or daily sales journals as required by the act and the regulations.

It appears from the evidence that the licensee may also be in breach of other provisions of the Act and the regulations; however, the Tribunal does not intend in these proceedings to pass comment on those particular breaches. It leaves that to the Board to deal with as it sees fit. The question of penalty has raised some difficulty for the Tribunal since as Mr. Grannum correctly pointed out, what the Board in its wisdom decided to do was to treat the figures filed as being unreliable and by inference conclude that there has been a breach of the 50/50 food to liquor sales ratio required by the regulations.

The Tribunal confirms the Order of the Liquor Licence Board dated July 2, 1981 wherein the said Term and Condition was applied, and orders that the said Term and Condition is to take effect beginning with the commencement of business on the 28th day of September, 1981. The Tribunal, pursuant to Section 15 (3) of the Liquor Licence Act, directs the Board to request for production from the licensee the

books, records and/or daily records required to be maintained under Section 5 paragraph 31 of the regulations for the period July 1980 to June 1981 on or before the 28th day of September, 1981. In the event the licensee fails to produce the said books, records, and/or daily records as aforesaid, the Board is directed by the Tribunal to issue a Notice of Proposal wherein the Board proposes to suspend the licence of the licensee for such period of time as the Board deems appropriate. The Tribunal further directs, that in the event the licensee produces the records hereinbefore referred to, then the Board is directed to take such action as it deems to be fair and reasonable.

The above decision and reasons therefor were orally given at the conclusion of the hearing by the Chairman in the presence of the other two members who concurred.

LIQUOR LICENCE ACT
REVISED STATUTES OF ONTARIO, 1980, CHAPTER 244

IN THE MATTER OF THE DECISION OF the Liquor Licence Board dated the 11th day of June 1981, to attach a term and condition to the Dining Lounge licence issued to Tryus Foods Limited, Licensee (Licence Number 021923) of Houlihan's Restaurant, situate at 110 York Street, Ottawa.

AND IN THE MATTER of an appeal from the decision of the Liquor Licence Board in the above matter and a request for a hearing pursuant to Section 14(1) of the Liquor Licence Act

BEFORE:

John Erickson, Q.C., Vice-Chairman as Chairman
Barbara Shand, Member
Jack C. Sim, Member

Upon the matter coming before the Liquor Licence Appeal Tribunal this 25th day of November, 1981 in the presence of:

John J. Cardill, counsel for the Applicant

S.A. Grannum, counsel for the Liquor Licence Board

DECISION AND ORDER

BY VIRTUE OF THE AUTHORITY vested in it under the Liquor Licence Act, the Tribunal acting on the consent filed by the parties, revokes the decision of the Liquor Licence Board dated June 11th, 1981.

C & W HOTEL ENTERPRISES INC.
(IMPERIAL HOTEL)

APPEAL FROM THE DECISION OF THE LIQUOR LICENCE
BOARD TO ATTACH A TERM AND CONDITION TO THE DINING
LOUNGE LICENCE

TRIBUNAL: JOHN YAREMKO, Q.C., CHAIRMAN
GALE McAULEY, MEMBER
KENNETH VANHAMME, MEMBER

COUNSEL: ROBERT REINHART, representing the Applicant
S. A. GRANNUM, representing the Liquor Licence Board

HEARING
DATE: November 27, 1981

REASONS FOR DECISION AND ORDER

By order of date the 23rd day of June, 1981, the
Liquor Licence Board of Ontario attached to the dining lounge
licence of the licensee herein

"the "TERM AND CONDITION" that the sale and service of
alcoholic beverages in these licensed 'Dining Lounge'
premises shall CEASE at 10:00 p.m. daily until such
time as the requirements of Section 6, Subsection (5)
of Regulation 1008/75 under the Act are met to the
satisfaction of the Board."

The Tribunal finds as is set forth in Exhibit 5 and by
virtue of the statement in respect of the month of October,
that for the months of July, August, September and October the
total receipts from the sale of food have exceeded the total
receipts from the sale of liquor so that the requirements of
section 6, subsection (5) of the Regulation in respect of
paragraph (a) are met.

There is no evidence before the Tribunal that the
record keeping referred to in paragraph (b) is not presently
maintained in accordance with the Regulations.

Accordingly, by virtue of the authority vested in it under the Liquor Licence Act, the Liquor Licence Appeal Tribunal directs the Liquor Licence Board to remove the term and condition set out in the decision of the Board.

The above decision and reasons therefor were orally given at the conclusion of the hearing by the Chairman in the presence of the other two members who concurred.

LES GARS RESTAURANTS LIMITED
(LES CAVALIERS TAVERN)

APPEAL FROM AN ORDER OF THE LIQUOR LICENCE
BOARD TO SUSPEND A DINING LOUNGE LICENCE AND
ATTACH A TERM AND CONDITION

TRIBUNAL: GORDON I. PURVIS, Q.C., VICE-CHAIRMAN AS CHAIRMAN
BARBARA J. SHAND, MEMBER
M. GALE McAULEY, MEMBER

COUNSEL: DAVID J. McFADDEN, representing Les Gars
Restaurants Limited, Licensee
S. A. GRANNUM, representing the Liquor Licence
Board

HEARING

DATE: March 26, 1981

REASONS FOR DECISION AND ORDER

Les Gars Restaurants Limited is the Licensee (Dining Lounge Licence No. 090197) of the establishment classified as a restaurant known as Les Cavaliers Tavern, 414-418 Church Street Toronto, Ontario.

The officers and directors of the Licensee corporation are:

Janko Naglic
Freda (Groves) Johnson

The Licence holder acquired the licensed premises on September 24th, 1975, and has operated the premises since that date.

The Licence issued to the Licensee is a Dining Lounge Licence in respect of premises situated in a two-story building consisting of three areas on the Main Floor, having capacities of 38, 37 and 40 persons respectively, and three areas on the second floor, having capacities of 40, 29 and 29 persons respectively.

On August 14th, 1980, the Liquor Licence Board issued a Notice of Proposal "to SUSPEND for a period of ten (10) days the liquor licence held by you for the above-named establishment; and thereafter to attach a Term and Condition to the said liquor licence that the sale and service of liquor shall CEASE at 9:00 p.m. daily until further ordered by the Board".

The Proposal indicated that the Licenceholder had filed with the Board statements of the gross receipts from the sale of food and liquor for the period, September 1978, to June 1980, showing food receipts exceeding liquor receipts in each month. In addition the Licenceholder had filed with the Board an audited Financial Statement showing gross sales of liquor and food for the six-month period ending February 28, 1979, and for the seven-month period ending March 31, 1980.

Furthermore the unaudited Financial Statement showed that for the period, September 1978, to February 1979, the gross receipts from the sale of spirits, beer and wine totalled \$169,828.00 and for food \$99,447.00. However, the statements of food and liquor sales filed with the Board on a monthly basis, as referred to above show the totals for the same period to be as follows:

Spirits, Beer and Wine	-	\$121,812.31
Food	-	\$152,715.98

For the seven-month period ending March 31st, 1980, the gross receipts from the sale of spirits, beer and wine show a total of \$235,726.00 and for food - \$156,438.00. However, the monthly statements for the same period show the totals to be:

Spirits, Beer and Wine	-	\$210,133.44
Food	-	\$194,974.15

The Board found, in addition, that photocopies of sales figures for July 1979, to July 1980, taken from the books and records of the Licenceholder indicate that the totals from the said books and records are different from the total filed with the Board.

On the basis of the above, the Board found that 'the past conduct of officers and directors of the Licensee Corporation afford reasonable grounds for belief that its business will not be carried on in accordance with law and with honesty and integrity because the Licenceholder has, contrary to Section 55 of the Liquor Licence Act, knowingly furnished false information in statements and returns required to be furnished to the Board pursuant to the Regulations'.

At a meeting held before the Liquor Licence Board on November 27, 1980 to consider its proposal, the Board found that the Licenceholder had indeed carried on activities contrary to the Act and Regulations as set forth in the Notice of Proposal and issued its Decision as follows:

"The Board therefore, ORDERS that the 'Dining Lounge' Licence issued to Les Gars Restaurants Limited, in respect of Les Cavaliers Tavern, be "SUSPENDED" effective at the opening hour on Monday, January 5th, 1981, and to continue until the opening hour on Wednesday, January 14th, 1981.

Also, the Board ORDERS that commencing Monday, February 16, 1981, the "TERM and CONDITION" is that the sale and service of alcoholic beverages in the 'Dining Lounge' of Les Cavaliers Restaurant shall cease at 9:00 P.M. daily until such time as the requirements of Section 6, subsection (5) of Regulation 1008/75 are met to the satisfaction of the Board.

Moreover, the Board advised that members of the Board's inspection staff will attend at these premises prior to February 16, 1981, with a view to monitoring the actual food and liquor sales generated in the 'Dining Lounge' establishment. In this connection, upon receipt of the relevant report from the staff members in question, this operation will be reviewed and if it is in conformity with the aforesaid Section of the Regulations, the said "TERM and CONDITION" shall not become effective on Monday, February 16, 1981."

As a result of this Decision, the Licensee Corporation requested a Hearing before the Tribunal.

At the Tribunal Hearing the Board's investigators introduced in evidence the results of their investigations of July 9, July 22, and 23, 1980, substantially as recorded in Exhibit 4, being the Record of Proceedings for the Liquor Licence Board. The results of these visits indicated that the problems with this establishment, particularly in meeting the food/liquor ratio as stipulated in Section 6 (5) of the Regulations, could be attributed to the fact that, although the three rooms downstairs combined could be termed, as to facilities, a bona fide food operation, the second floor consisting of three sections was found to be basically a stand-up bar arrangement together with a small dance floor, pool table, pinball machines and shuffle-board. On the above dates, no food was available, no tables for dining were in evidence and no service provided. Each patron obtained his drink and then wandered around the three rooms. On the aforesaid July 22 and 23 inspections, the upstairs area was severely overcrowded with 150 to 200 patrons present, whereas the total capacity of the three second floor rooms was 95 as stipulated in the Licence. On the said dates cash register tape analyses were taken showing the ratio for the combined upstairs and downstairs operation to be:

	<u>Liquor</u>	<u>Food</u>
July 22nd, 1980	67.69%	32.31%
July 23rd, 1980	65.85%	34.15%

Both principals of the Licensee Corporation gave evidence as to the history of the operation and the extent of the major changes and renovations made to the establishment since November 1980, including the complete renovation of the Main Floor dining areas, the hiring of a new chef, changes made to the second floor areas, including the installation of a new floor with a built-in food counter, and attempts to promote the sale of food particularly on the second floor; the purpose of these changes and expenditures being to obtain if possible the proper food/liquor balance for the entire operation. The Tribunal is cognizant of these efforts made subsequent to the Board's Decision, but notes that in Exhibit 5, being the Licenceholder's historical background of Les Cavaliers Tavern containing a summary of food/liquor sales and percentages from September, 1975 to January, 1981, the food/liquor ratios for the period considered by the Board show the following:

September 1978 to March 1980

Food Sales	- varying between 26% and 40.4%
Liquor Sales	- varying between 59.6% and 74%

Both principals admitted in their evidence that they had knowingly over a period of time until the Board intervened, falsified the figures submitted to the Board with the sole purpose of retaining the Licence. They were aware that correct reports, if submitted, would result in the loss of their Licence and of their business, and they took a chance on falsifying figures.

On the evidence submitted, the Tribunal finds that the allegations contained in the Board's Notice of Proposal have been proved and that the past conduct of the officers and directors of Les Gars Restaurants Limited afford reasonable grounds for belief that its business will not be carried on in accordance with law and with honesty and integrity because the Licenceholder has, contrary to Section 55 of the Liquor Licence Act, knowingly furnished false information in statements and returns required to be furnished to the Board pursuant to the Regulations.

As to the penalty to be imposed, the Tribunal views the actions of the Licensee Corporation and its officers as a very serious offence, and considers the penalty proposed by the Board to be lenient in view of the circumstances. Despite assurances given, it remains to be seen whether or not the Licenceholder and its principals have learned by their mistakes. They have given their assurance at the Tribunal Hearing that they 'don't intend to break the Regulations again', and feel 'they are entitled to a second chance'. In the opinion of the Tribunal these submissions have already been taken into consideration in the extent of the penalty proposed by the Board.

The Tribunal therefore finds that the Licensee is in breach of Section 6 (5) of Regulation 1008/75 under the Liquor Licence Act, and hereby confirms the Decision of the Liquor Licence Board of November 27, 1980, and directs the Board to set the effective dates for the period of the suspension, the Term and Condition, and the further monitoring of the premises as proposed in the Board's said Decision.

MIKE'S HOLIDAY LTD.

APPEAL FROM A PROPOSAL OF THE LIQUOR LICENCE BOARD
TO REVOKE THE DINING ROOM LICENCE

TRIBUNAL: JOHN W. ERICKSON, Q.C., VICE-CHAIRMAN AS CHAIRMAN
BARBARA J. SHAND, MEMBER
GALE McAULEY, MEMBER

COUNSEL: MICHAEL A. KUCHMEY JR. acting as its agent
S.A. GRANNUM representing the Liquor Licence Board

HEARING DATE: August 6, 1981

REASONS FOR DECISION AND ORDER

This is an appeal from the order of the Liquor Licence Board dated May 1, 1981 wherein the Board ordered a revocation of the licence of Mike's Holiday Ltd. as of September 1, 1981 unless prior to that time an application for the transfer of the licence to a purchaser of the business had been received by the Board. It appears to be a matter of common ground, from the evidence received by the Tribunal today, that since February of 1981 a number of things have happened. Firstly, there has been a substantial expenditure of funds by the licensee with respect to the upgrading and renovation of the premises. Secondly, there has been, in the opinion of the Tribunal, a sincere and honest effort to achieve compliance with the Regulations to the Liquor Licence Act and in the opinion of the inspector Mr. Davenport there has been a substantial improvement in the operation of the premises, at least during this part of 1981.

The only issue that faces the Tribunal is the question of disposition and it appears to be a matter of common ground as indicated by the submissions of Mr. Grannum that revocation at this time would not be warranted as a disposition of this matter. The Tribunal has reviewed Exhibit #7 which was filed before it, which indicates that for the months June and July of 1981 the licensee appears to have achieved compliance with Section 6(5)(a) of the Liquor Licence Act. The Tribunal therefore directs as a disposition of this matter that the order of the Liquor Licence Board dated May 1, 1981 be revoked. Secondly, that the Liquor Licence Board be directed to monitor the sale of food and liquor by the licensee, Mike's Holiday Ltd., within 30 days from the date of this order, to

assist in the determination as to whether or not the licensee is now in compliance with Section 6(5) of the Regulation to the Act.

If within 30 days the Board determines compliance with the aforementioned Regulation has been achieved, the term and condition respecting early closing hours shall be removed and the licensee shall be allowed to operate its business in accordance with the hours prescribed by Section 6 of the Regulations to the Act. Now perhaps if I can just explain that to you, sir, what we are directing the Board to do is to go back to your premises and to monitor them. You'll notice that we said that that monitoring should assist the Board; it may well be that there could be a day or two during which the monitoring took place where the balance could be slightly to your disadvantage. So we also wish the Board to look at the monthly figures which have been submitted to obtain an average for the month.

And if at the end of that 30-day period the Board determines that your food/liquor ratio is in compliance with the Act, we have directed the Board to remove the term and condition and you will be allowed to operate on normal hours.

The above decision and reasons therefor were orally given at the conclusion of the hearing by the Chairman in the presence of the other two members who concurred.

O'BANIONS TAVERN

APPEAL FROM A PROPOSAL OF THE LIQUOR LICENCE BOARD
TO SUSPEND LIQUOR LICENCE

TRIBUNAL JOHN ERICKSON, Q.C., VICE-CHAIRMAN AS CHAIRMAN
 BARBARA SHAND, MEMBER
 KENNETH VANHAMME, MEMBER

COUNSEL J. JEFFERY WEINSTEIN, representing the Applicant
 S. A. GRANNUM, representing the Liquor Licence Board

HEARING
 DATE November 18, 1981

REASONS FOR DECISION AND ORDER

I might add at the beginning that I reserve the right to edit these comments as chairmen and judges normally do prior to issuance. This is an appeal from the decision of the Liquor Licence Board dated the 20th day of July, 1981 to suspend the licence issued to Mrs. Mary Pataran, licensee, holder of Licence Number 091483 carrying on business as O'Banions Tavern. The facts in this particular hearing do not appear to be in dispute and I will outline some of them. There has been an operation in existence at O'Banions and operated either by Mr. Pataran, Mrs. Pataran or both depending on who owned it at the particular time, for approximately the last ten years, and the evidence indicates to the Tribunal that the record prior to March 6th, 1981 can be characterized as a good record. The inspector who is directly responsible for this particular establishment Inspector Leslie, proffered no criticism with the operation either with respect to the supervision or the management. It is undisputed that O'Banions is managed, if that word can be used by one Erwin Schrot and that Mr. Pataran is one building away in an operation described as the Upfront Lounge. Evidence was tendered by Mr. Pataran through his counsel indicating that Mr. Schrot was provided with directions in terms of the management of O'Banions and that is made an exhibit in front of the Tribunal. There is no dispute that on March 6th, 1981, there were minors on the premises on the night in question and it is noteworthy that we are not dealing here with one minor but many who were attending a birthday party. It is clear from the evidence and the Tribunal finds that this was the first time this licensee has found itself in difficulty with the Liquor Licence Board as a result of alleged contravention under the Liquor Licence Act and the

Regulations to that Act. Some evidence was tendered with respect to the position of Erwin Schrot and the responsibility of the licensee for his acts and the Tribunal as the basis for its finding, does find and is of the view that the licensee in fact is responsible for the acts of Erwin Schrot and tenders its decision on that basis. The question that the Tribunal must deal with is one of penalty, because the Tribunal does find that there is a contravention of Section 5 (5) of the Regulations to the Act and Section 5 (5a) of the Regulations to the Act. Mr. Weinstein in his argument placed before the Tribunal his thesis that the operation in question had been operated and without incident prior to March 6th, 1981. He indicated that because of the foreseeable number of patrons which one could expect on any given day or evening, the number of employees present in O'Banions was reasonable. He stated to the Tribunal that what happened on March 6th, was what he describes as an aberration and had never happened before and the Tribunal is satisfied on the evidence before it that that is correct and that it has not happened since. Mr. Weinstein argues that this should be a factor to be looked at in mitigation. The evidence does, in fact, indicate that this is a one man operation and that on the night in question because of the numbers present in the establishment, the establishment had, in fact, turned into a self-serve operation due to the fact that only Mr. Schrot was in evidence as an employee of O'Banions. The Tribunal accepts the evidence of the police officer in that regard. It is clear that nobody was in the position on the night in question to screen persons or patrons entering the establishment at the material time. The Tribunal finds that this is a risk that manager Schrot chose to take and the Tribunal further finds that the licensee must accept the responsibility for that risk which was undertaken by Mr. Schrot. The Tribunal has in the past expressed its view that the licensee is the first line of defence against minor drinking in an establishment and that the Act and the Regulation makes that onus very clear. This is a risk and it is a burden that the licensee accepts once he accepts the right to hold a licence. The Tribunal has said in the past that it should not interfere with the Board's decision on penalty unless and except for a good reason and in support of that proposition the Tribunal refers to Chatsworth Hotel, a decision contained in Chapter 4 of the Decisions of the Liquor Licence Appeal Tribunal on page 24. The decision the Tribunal has asked itself is "has there been any different or new evidence", and in that regard has examined the minutes contained in Exhibit 6 of the Board's proceedings to determine that issue. The Tribunal has noted that the minutes of the proceedings before the Board do not contain evidence from Inspector Leslie other than evidence dealing with the number of occupants permissible in the establishment and the type of licence.

There is some suggestion that Inspector Leslie was asked some questions with respect to the operation generally but it would appear to the Tribunal dealing with page 12 of Exhibit 6 that this may well have been done outside of the presence of counsel for the licensee. It is also noteworthy that Constable Dybenko gave evidence as to the operation of this establishment while it appears the majority of the evidence, as far as the police were concerned before the Board, was given by Constable Crook.

The Tribunal acknowledges that the effect of the evidence with respect to good character is only one element to be considered when dealing with the issue of penalty. The Tribunal does find however that the question of a good record or good character does not appear to have been sufficiently developed before the Board and that this can be categorized as new or different evidence and should be taken into account.

The Tribunal does therefore, pursuant to Section 15 of the Liquor Licence Act, revoke the Order of the Liquor Licence Board dated July 28th, 1981 and in its place and stead the Tribunal orders that the licence issued to Mrs. Mary Pataran as Licence Number 091483, O'Banion's Tavern, shall be suspended for seven (7) days commencing at the opening hour on Monday, November 30th, 1981 and continuing in effect until the opening hour on Monday, December 7th, 1981.

The above decision and reasons therefor were orally given at the conclusion of the hearing by the Chairman in the presence of the other two members who concurred.

PARKVIEW HOTEL

APPEAL FROM A DECISION OF THE LIQUOR LICENCE BOARD
TO REVOKE A DINING-LOUNGE LICENCE AND A LOUNGE
LICENCE

TRIBUNAL: GORDON I. PURVIS, Q.C., VICE-CHAIRMAN AS CHAIRMAN
BARBARA J. SHAND, MEMBER
GALE McAULEY, MEMBER

COUNSEL: ARTHUR MALONEY, Q.C., representing the Parkview Hotel
S. A. GRANNUM, representing the Liquor Licence Board

HEARING

DATE: APRIL 2, 1981

REASONS FOR DECISION AND ORDER

The facts of this case are not in dispute and may be summarized as follows:

The Parkview Hotel, formerly known as The Essex House, located at 371 Riverside Drive West, Windsor, Ontario, was closed on June 7th, 1980, when the City of Windsor expropriated the property to make room for urban development in the area.

Mr. Peter Cogan, the Appellant before the Tribunal, is the present holder of a Lounge Licence and Dining Lounge Licence No.01026 for the operation of the Parkview Hotel. These licences had been acquired by Mr. Cogan on March 1, 1972, by transfer from the previous owner. At the time of acquisition the building was badly in disrepair and had been condemned by the City for non-compliance with numerous work orders, together with non-payment of taxes. Mr. Cogan paid \$125,000.00 for the hotel including payment of the tax arrears, and between 1972 and 1975 he spent upwards of \$100,000.00 to completely renovate and refurbish the premises. The hotel was then appraised at \$450,000.00 and, up to the date of its closing, was a profitable operation.

In 1977, the City of Windsor commenced expropriation proceedings and offered a settlement of \$280,000.00. Mr. Cogan appealed to the Land Compensation Board requesting \$575,000.00 compensation for the property and the business. His main reason for demanding this amount was that, in view of the City putting him out of business, the City should also buy or compensate him for his licence, since it would be of no use to him without premises in which to operate.

The City finally agreed in 1979 to a settlement of \$400,000.00 and disbursements for the building and land only, indicating that Mr. Cogan retain the licence, equipment and chattels necessary to operate the hotel business.

The Parkview Hotel was a three-floor operation and its seventeen rooms were always filled. However, it was more like a public house since the bulk of its income (approximately 97%) was derived through sales of liquor and food in the hotel's lounge and dining-room, having a seating capacity of approximately 200.

As a result of the expropriation, Mr. Cogan was left with a valid licence but no place to go. Various attempts were made by him to relocate, but it was impossible to find equivalent property within the area for the amount of compensation received. However, one of his contacts put him in touch with a Mr. Frank Montello, a practising criminal lawyer in Windsor, who owns and operates Fiddler's Restaurant located at 119 Chatham Street West, in Windsor. This was bought in December 1977, being an old five-storey warehouse and store building. After renovations the main floor and basement have been and are now operated under an Entertainment Lounge Licence and a Dining Lounge Licence with capacities of 110 upstairs and 92 downstairs.

Mr. Cogan offered to transfer his hotel licence and operate in the Fiddler's premises, either under a lease or in partnership with Mr. Montello. The latter was interested in this proposition and was willing to give up the licences under which Fiddler's is now operating. The advantage of such a transfer would be that the hotel licence would not be subject to the food/liquor ratio which had posed a problem in the past for Fiddler's. Through an agent, Mr. Cogan approached the Board with this proposal and was advised by a letter of February 8th, 1978, that "consideration by the Board to transfer the existing licences to a proposed new location would be on the basis that the new hotel building, located within the City of Windsor, would conform to all the provisions of the Liquor Licence Act, 1975, and Regulation 1008 made thereunder, including Section 23, subsection 2, relevant to the number of guest rooms in relation to the seating capacity in the premises licensed as a public house or lounge".

To be licensed, the Regulations under the Act require new hotels to have a minimum of fifty rooms, and to place Mr. Cogan in the same position as he was in the Parkview Hotel, the new premises should have the same number of rooms (17).

The expense to him in relation to the cost of building such rooms in the new location was estimated at \$225,000.00, together with \$110,000.00 for the installation of an elevator and other mechanical work.

As a last resort Mr. Montello indicated he would be willing to build 17 rooms but Mr. Cogan maintains this would result in further unfairness to him, because he had no control over the expropriation by the City, and the money he received was not sufficient to buy anything suitable in the area. The value of Mr. Montello's premises is approximately \$700,000.00, and the additional cost of building rooms in the upper floors would bring the value of the property to over one million dollars.

Fiddler's is three blocks away from where the Parkview Hotel was located, and was the only adequate and available site within the same area which Mr. Cogan was able to find. He has been working at Fiddler's on a sharing arrangement since June 1980, and in July 1980, Mr. Cogan, through his solicitor, applied to the Board for a transfer of his licence to Mr. Montello's premises.

On August 7th, 1980, the Board issued a Notice of Proposal pursuant to the Liquor Licence Act, S.O. 1975, Ch.40, sec. 11(3), to REVOKE the Liquor Licence held by Peter Cogan for the Parkview Hotel, the reasons given: "Since on or about June 7th, 1980, the establishment has been closed as the property was expropriated by the City of Windsor; the Licenceholder is not entitled to a Liquor Licence in respect of the Parkview Hotel because the hotel no longer provides accommodation, food and lodging to the general public and the legislation does not permit the transfer of liquor licences from one location to another".

After a Hearing on November 13, 1980, to consider the above proposal, the Board found 'that the Licenceholder has been in contravention of the aforesaid Act and Regulations appurtenant thereto, the particulars of which are set forth in the 'Notice of Proposal' dated August 7th, 1980, and rendered the following Decision:

The Board, therefore, ORDERS that the 'Dining-Lounge' and 'Lounge' licences granted to Peter Cogan, in respect of the Parkview Hotel, be "REVOKED" as of December 1st, 1980."

As a result of the above Decision, the Licensee requested a Hearing by the Tribunal. Counsel for the Appellant and for the Board agreed on the Statement of Facts as set out above, and the Hearing therefore proceeded with submissions presented by both Counsel.

Counsel for the Board, Mr. Grannum, made the following submissions:

1. Where licensed premises cease to exist as a result of expropriation by a Municipality or any other cause, such as total destruction by fire, then the liquor licences for the premises are subject to revocation by the Board.
2. A Liquor Licence does not create a property right, and for this reason, the City of Windsor refused to give a value to the Liquor Licence in the expropriation proceedings.
3. Section 6 (1) (f) stipulates that there must be "premises and accommodation, equipment and facilities" that comply with the Act and Regulations. The holder of a Liquor Licence must not only be personally qualified, but the premises where the liquor is to be sold must meet certain standards. If the Applicant is disqualified for either one of these reasons, he is not eligible for a liquor licence.
4. When the City of Windsor expropriated the premises, the Board was justified in revoking the Liquor Licence.
5. The sole reason why the Appellant seeks to maintain the liquor licence is that the retention of the Lounge Licence in the new premises as proposed will not require compliance with the food/liquor ratio.
6. The meaning to be given to "transferred" as used in Section 4(4) of the Liquor Licence Act does not mean removal of a licence from one place to another, but means the sale of an existing licensed premises by the Licenceholder to a purchaser. Otherwise any holder of a Lounge Licence could "transfer" his licence to premises such as a restaurant that is not eligible for a Lounge Licence, thereby defeating the purpose and intent of the legislation.

7. The purpose of the Liquor Licence Act is to license both the person and the premises, and if either the person or the premises ceases to qualify for the Licence, the Licence is no longer in good standing and cannot be transferred.

In addition, Mr. Grannum maintained that the Licenceholder no longer has control over the premises because of expropriation and possible demolition, and it is therefore impossible for the Licenceholder to comply with the Act and, indeed, if the premises have been demolished, there is nothing to licence. Under Section 6 (1) (f) and Section 11(3) the Board has power to revoke a liquor licence where the premises, accommodation and facilities do not comply with the Act and Regulations.

Counsel for the Appellant, Mr. Maloney, presented the following grounds of Appeal:

1. The Board has power to grant a transfer of the Licence under Section 4(4) and Section 6(1) (f) of the Act.
2. In revoking the licences of Mr. Cogan the Board failed to give proper weight to the circumstances of this case, causing a disposition grossly unfair to the Licensee.

Under this ground, reference was made to the unfairness to Mr. Cogan being forced by the expropriation out of a successful and profitable business operation; the lack of compensation granted for the Licence and goodwill; the efforts made by Mr. Cogan to locate without success adequate replacement property; the proposed arrangements agreed upon with Mr. Montello's approval and support to relocate in the Fiddler's location and the suitability of same; the financial loss to Mr. Cogan if his licences cannot be transferred and are revoked. Reference was made by Counsel to Kerby Hotel case (1979) 3 LLAT 67 and to Lido Tavern case (1979) 3 LLAT 75.

3. The Board acted in excess of its powers under Section 11(3) of the Act because the Licensee was not in breach of any condition imposed under Section 6, nor was the Licensee in breach of Section 4(2) of Regulation 1008/75 which requires that in order for the premises to continue to be eligible for a particular class of license, the premises must be in continuous operation under that class of licence.

4. The Board has power under Section 10(1) and (2) of the Act and under Section 4(a)(i)(ii)(iii)(iv) of the Regulations to grant a reclassification of the premises for which Mr. Cogan's licences were originally granted from "hotel" to a "tavern", so that Mr. Cogan would not be required to build any rooms at the new location on the grounds that they are not in the public interest.

The Order sought by Counsel included:

1. Quashing the Board's Order revoking the licences.
2. Transfer of the licences to Fiddler's.
3. Reclassification of the premises for which Mr. Cogan's licences have been granted from hotel to a tavern.
4. Mr. Cogan be allowed to transfer his licences to Fiddler's and be required to build no more than 17 rooms, the end result of which would be that he would be in a similar position to his prior to expropriation.

Counsel for the Appellant argued that the Licenceholder has been in contravention of the Act and Regulations, through no deliberate act on his part, solely as a result of the expropriation, and the Board has the discretion under the Act to grant, refuse, revoke, etc. a licence, and in so exercising this discretion is under a duty, where dealing with the rights of an individual as here, and in the interests of natural justice and fairness, to grant relief. The Tribunal was referred by Counsel to the number of cases courts have dealt with in the past affecting the rights of an individual and the application of natural justice to the matter in dispute.

Having considered carefully the arguments presented by Counsel, the Tribunal observes that the Liquor Licence Act, being a regulatory or controlling Statute of the Provincial Legislature, was enacted to control the sale of liquor in the Province, and requires compliance with the rules and regulations referred to in ther Statute. The function of the Board and of the Tribunal is to interpret these regulatory provisions with, in the Tribunal's opinion, a limited not absolute discretion, and the powers and limitations of each body are generally contained in the Act and Regulations.

Section 6(1) of the Act reflects however, the latitude given by the Legislature to an Applicant for a Licence or for

approval of a transfer of same, when it stipulates and preserves the Applicant's entitlement to the issuance or transfer, except under certain specified conditions. Section 6(1)(f) outlines one of these conditions - "the premises and accommodation, equipment and facilities in respect of which the Licence is issued do not comply with the provisions of this Act and the Regulations applicable thereto;". The Tribunal accepts the Board's contention that Section 6(1)(a) to (e) contains certain personal standards to be met by an Applicant, and clause (f) certain standards to be met by the premises where liquor is to be sold, and if the Applicant is disqualified under one of these standards, he is not eligible for a liquor licence, and pursuant to Section 4 (4) of the Act, the Board may withhold its approval of a transfer, and under Section 11 (3) of the Act the Board may revoke a licence or licences previously issued. Through expropriation Mr. Cogan now owns no premises which could be licensed.

A further argument submitted by Counsel for the Appellant alleged that the Board failed to give weight to the circumstances of this particular case thereby causing a disposition grossly unfair to the Licensee. The Tribunal is quite aware of the fact that the expropriation terminated what, for Mr. Cogan, had been a successful and profitable operation. However, essentially the unfairness he alleges lies in the main with the inadequacy of the compensation received from the City of Windsor for his property, and particularly with the failure or refusal of the City to compensate him for or, as it was represented at the Hearing, 'buy his Licence and goodwill'. In addition, the Tribunal accepts the Board's contention that a licence to sell liquor is merely a permission to do that which would otherwise be unlawful and does not create a property right to which a value can be ascribed as in expropriation proceedings. This was the basis for the City of Windsor refusing to assign a value to Mr. Cogan's licences.

In dealing with Section 4(2) of the Regulations, the Tribunal was referred by Counsel to its Decisions in the Kerby Hotel and Lido Tavern cases mentioned above. The Tribunal wishes to distinguish these two cases, which in each instance involved premises which had been damaged by fire. The problem facing each Licensee was the rebuilding of the already licensed premises and the Tribunal granted relief from the "continuous operation" provision stipulated in the said Section 4(2). In the Lido Tavern case however, relief was made subject to conditions including one that the Licensee reconstruct and renovate the existing premises within a specified period of time.

Mr. Cogan, however, on the other hand is faced with a far different situation, in that the Parkview Hotel premises having been expropriated and demolished are no longer in existence and are completely out of his control.

It was argued by the Appellant's counsel that the Board should approve the transfer of Mr. Cogan's licences to Fiddler's Restaurant, though the latter, being classified as a restaurant, is only eligible for the classes of licences in Column 1 of the Table to Section 4 (1) of the Regulations, namely Entertainment Lounge, Dining Lounge, Dining Room and Patio Licences. The Tribunal agrees with the Board's contention and finds that Fiddler's Restaurant would not be eligible for a Lounge Licence and that the purpose and intent of the legislation would be negated if a Licensee, such as the present Appellant, was permitted to transfer his Lounge Licence to ineligible premises. The Tribunal finds that the meaning to be ascribed to Section 4(4) of the Act is that in fact it contemplates the sale of existing licensed premises by the Licenceholder to a purchaser and not the removal of a Licence from one establishment to another.

For the reasons set out above, the Tribunal further finds against any reclassification of the premises for which Mr. Cogan's licences were originally granted, under Sections 10(1) and (2) of the Act, and Section 4 (a) (i) (ii) (iii) and (iv) of Regulation 1008/75 as submitted by the Appellant's Counsel.

Finally the Tribunal was urged by Mr. Maloney to bend the provisions of the Liquor Licence Act by exercising its discretion in favour of the Appellant in the interests of fairness and natural justice, and because of the unusual circumstances of this case, where Mr. Cogan through no fault of his own was deprived of his livelihood. It was contended that the Board had a discretion to grant relief but applied too rigid an interpretation of the Act and Regulations, and by so doing deprived Mr. Cogan in its decision of natural justice or his right to be treated fairly. In this regard, Counsel cited a number of cases, included among them a Judgement of the English Court of Appeal in *Byrne v. Kinematograph Renters Society Ltd.* 1958 Weekly Law Reports 762, where Harman, J. in dealing with this right of an individual, made the following observation on page 784 - "...The requirements of natural justice must depend on the circumstances of the case, the nature of the inquiry, the rules under which the Tribunal is acting, the subject-matter that is being dealt with, and so forth. Accordingly I do not derive much assistance from the definitions of natural justice which have been from time to time used,..."

...What then are the requirements of natural justice then in a case of this kind? First, I think that the person accused should know the nature of the accusation made; secondly, that he should be given an opportunity to state his case; and, thirdly, of course, that the Tribunal should act in good faith. I do not myself think that there is really anything more..."

In reviewing these requirements and considering them in relation to this Hearing and the previous Hearing before the Liquor Licence Board, the Tribunal is satisfied that this Appellant has been treated in the manner indicated by the above criteria.

The Tribunal hereby confirms the Decision of the Liquor Licence Board of November 13th, 1980, revoking the 'Dining Lounge' and 'Lounge' licences granted to Peter Cogan, the effective date of the revocation to be set by the Board.

PLUTO'S SOCIAL CLUB

APPEAL FROM A DECISION OF THE LIQUOR LICENCE BOARD
TO REFUSE TO ISSUE A SPECIAL OCCASION PERMIT.

TRIBUNAL: GORDON I. PURVIS, Q.C., VICE-CHAIRMAN AS CHAIRMAN
BARBARA J. SHAND, MEMBER
KENNETH VAN HAMME, MEMBER

COUNSEL: S. A. GRANNUM, for Liquor Licence Board

No one appearing for the applicant.

HEARING

DATE: March 17, 1981.

REASONS FOR DECISION AND ORDER

A Tribunal Hearing of this matter was held on March 17th, 1981, to consider an appeal by the applicant, Daryl Clarkson, Secretary-Treasurer of Pluto's Social Club from the decision of the Liquor Licence Board dated the 4th day of November, 1980, to refuse to issue a Special Occasion Permit to Pluto's Social Club.

After proof of Service of the Appointment For and Notice of Hearing upon the Applicant had been duly filed as Exhibit 11 to this Hearing, and a Certificate of Conviction of Susan Koehler, who was until September 30th, 1980, the President of Pluto's Social Club, showing her conviction of 'keeping a common bawdy house', contrary to the provisions of the Criminal Code of Canada, dated September 4th, 1980, and a copy of the Court Records dated September 4th, 1980, showing that the applicant, Daryl Clarkson, Secretary-Treasurer of the said Club had been convicted of exposing to view obscene video tapes, having been filed, and the Tribunal having noted that neither the applicant nor any Counsel representing him having appeared, the Tribunal finds that this appeal has been abandoned, and issues the following decision which is unanimous, the reasons for which were orally given at the conclusion of the hearing in the presence of the two other members who concurred.

BY VIRTUE OF THE AUTHORITY vested in it under the Liquor Licence Act

The Tribunal hereby confirms the decision of the Board dated the 4th day of November, 1980".

THE RED VELVET RESTAURANT

APPEAL FROM PROPOSAL OF THE LIQUOR LICENCE BOARD OF
ONTARIO
TO ATTACH A TERM AND CONDITION TO THE DINING LOUNGE
LICENCE

TRIBUNAL: JOHN W. ERICKSON, Q.C., VICE-CHAIRMAN AS CHAIRMAN
BARBARA J. SHAND, MEMBER
JACK C. SIM, MEMBER

COUNSEL: C. DEMERTZIS, Agent acting on his own behalf

S.A. GRANNUM representing the Liquor Licence Board

HEARING

DATE: August 4, 1981

REASONS FOR DECISION AND ORDER

This is an appeal by the Red Velvet Restaurant from a decision of the Liquor Licence Board dated June 25, 1981 wherein the Board attached a Term and Condition to the licence of the licensee requiring it to close at 10:00 p.m. daily until compliance was achieved with Section 6(5)a of the Regulations to the Act. Evidence was called on behalf of the Board which indicated that the liquor sales exceeded food sales on a monthly basis for a period comprising May of 1980 to June of 1981. These figures are filed as Exhibit 4 in these proceedings and are not in dispute. Further evidence was called by the Board which indicated that there was a bona fide restaurant operation in existence when investigators Holubka and Brooks attended to monitor the food and liquor sales in the premises in November of 1980 and February of 1981. In fact there appears to be no issue whatsoever with respect to the operation of the restaurant or the quality of the management.

Mr. Costas Demertzis indicated, in evidence, that he has purchased the interest of his former partner, Platon Voulgaris, and was now a sole proprietor within the meaning of that term. He further indicated that the transfer of the licence had not been completed at the time of the hearing before the Tribunal.

Further Mr. Demertzis indicated that, since the time of his purchase of the partnership interest from Mr. Voulgaris, he has implemented a breakfast trade in his restaurant in an attempt to increase food sales and achieve compliance with the Act. Mr. Grannum pointed out, and it is noteworthy, that the implementation of the breakfast trade was brought into being some time after the Board's Decision of June 25, 1981. Notwithstanding this submission, the Tribunal finds as a fact, that the effort made by Mr. Demertzis is bona fide and is a serious attempt by him to achieve compliance with the regulations. It is agreed by the licensee that there is, in fact, a breach of the regulations at the present time and this is not in dispute.

In dealing with the issue of disposition, which is basically the only issue before the Tribunal, the Tribunal is mindful that each and every case before it must be decided on its own merits. The Tribunal is also mindful and has carefully weighed the need to enforce respect for the Law as implemented by the Ontario Legislature. Balanced against this, the Tribunal has evidence before it which indicates the following: firstly, that there is a bona fide restaurant operation; secondly that there is no issue as to the quality of the management of the establishment; and thirdly, that there are bona fide attempts being made to achieve compliance with the regulations to the Act. These attempts are in the form of the implementation of a breakfast trade into the restaurant operation. The Tribunal is of the view that the steps being taken by Mr. Demertzis may well, in fact, be more practical as a solution to the problem than the early closing hours which were attached by the Board.

On the basis of all of the foregoing, and after carefully weighing the need for enforcement of the Law as implemented by the Ontario Legislature, as against the evidence which was called, the Tribunal is of the view that the Decision of the Board ought to be revoked and so orders.

The above decision and reasons therefor were orally given at the conclusion of the hearing by the Chairman in the presence of the other two members who concurred.

RESTAURANT L'EVENTAIL

MEETING TO CONSIDER WHETHER LIQUOR LICENCE APPEAL TRIBUNAL HAS JURISDICTION TO HOLD A HEARING WITH RESPECT TO AN APPEAL FROM A DECISION OF THE LIQUOR LICENCE BOARD BY MORRIS SILVER AND EDITH SILVER.

TRIBUNAL: JOHN YAREMKO, Q.C., CHAIRMAN
JOHN W. ERICKSON, Q.C., MEMBER
GORDON I. PURVIS, Q.C., MEMBER

COUNSEL: MORRIS SILVER and EDITH SILVER, in person

G. TSAMPILEROS, representing 451414 Ontario Limited
(Restaurant L'Eventail)

S. A. GRANNUM, representing Liquor Licence Board

REASONS FOR TRIBUNAL RULING

With respect to the request for a hearing in the Restaurant L'Eventail application, the facts are similar to those in the Centennial College of Applied Arts and Technology and the Chick 'N' Deli Restaurant applications. A difference is that the public meeting was held during the month of December.

Based on its decision in the Centennial College of Applied Arts and Technology application, the Tribunal finds that it has no jurisdiction to hold the hearing requested in the matter.

The ruling is the unanimous decision of the Tribunal.

The ruling and reasons therefor were orally given at the conclusion of the meeting by the Chairman in the presence of the two Members who concurred.

RODNEY'S RESTAURANT

DINING LOUNGE LICENCE ISSUED TO
 RODNEY'S RESTAURANT INC.,
 CARRYING ON BUSINESS AS
 RODNEY'S RESTAURANT,
 APPEAL FROM ORDER ATTACHING TERM AND CONDITION

TRIBUNAL: GORDON I. PURVIS, Q.C., VICE-CHAIRMAN AS CHAIRMAN
 BARBARA J. SHAND, MEMBER
 KENNETH P. VAN HAMME, MEMBER

COUNSEL: HOWARD E. KATZ representing the Licensee
 S. A. GRANNUM representing the Liquor Licence Board

HEARING
 DATE: January 27, 1981

Rodney's Restaurant Inc., is the Licensee (License No. 021400) of the establishment classified as a restaurant known as Rodney's Restaurant, 945-947 Upper James Street, Hamilton, Ontario.

The officers and directors of the licensee corporation are:

Roderick Stiles
 John C. Easton

The licenceholder acquired the licensed premises in November 1978 and has operated the premises since that date.

The Licence issued to the Licensee is a Dining Lounge Licence in respect of the following rooms located at the above address:

1. Main Floor: South Centre Section
Capacity - 95.
2. Main Floor: North Centre Section
Capacity - 47.
3. Second Floor: Entire Area
Capacity - 215.

On July 31st, 1980, the Liquor Licence Board issued a Notice of Proposal to attach to the Dining Lounge Licence for this establishment a Term and Condition "to suspend for a period of thirty (30) days the Liquor Licence held by you for the above-named establishment and at the expiration of the suspension period, to attach a Term and Condition that the sale of liquor in the licensed premises shall cease at 9:00 p.m. until further ordered by the Board."

The reasons for the above were given as follows:

"The past conduct of officers and directors of the licenceholder affords reasonable grounds for belief that its business will not be carried on in accordance with law and with integrity and honesty because:

(a) Contrary to Section 55 of the Liquor Licence Act, 1975, the licenceholder has knowingly furnished false statements of the gross receipts from the sales of food and liquor that are required to be furnished to the Board under the provisions of Section 5 (342) of the Regulations; and

(b) Contrary to Section 6, subsection (5) of the Regulations, the total receipts from the sale of liquor have exceeded the total receipts for the sale of food in the same month."

The licenceholder filed with the Board a statement of the monthly receipts of food and liquor in the licensed premises for the period December 1978 to May 1980 showing percentage receipts for liquor varying between 27% and 49% and for food 51% to 73%.

On July 17th, 1980, the Board's investigators attended this establishment to monitor the sales and found on that date liquor receipts represented 78% of gross sales and food receipts 22%. A comparison of the monthly summary sheets provided by the licenceholder for the period January 1st to April 30th, 1980, further indicated that the total receipts from liquor sales were \$88,199.05, whereas the total receipts from food sales for the same period were \$18,399.29. On the other hand, the licenceholder had filed with the Board the aforesaid statement showing that total receipts for the same period for liquor were \$12,580.00 and the total receipts for the sale of food were \$14,324.65.

At a meeting held before the Liquor Licence Board on September 16th, 1980, to consider its proposal, the Board found that the licenceholder had indeed carried on activities that are contrary to the Act and Regulations as set forth in the aforesaid proposal and issued its Decision as follows:

"Commencing on Wednesday, October 1st, 1980, there shall be attached to the said Licence the "Term and Condition" that the sale of alcoholic beverages in the 'Dining Lounge' of Rodney's Restaurant, shall cease at 10:00 p.m. daily, until such time as the requirements of the Board have been satisfied and a further Order is issued to the contrary."

The record of the Board's proceedings discloses in the Board's investigators report that this establishment consists of a Main Floor Dining Lounge and a Second Floor Lounge. The main floor facilities appear to have all the amenities comprising a bona fide restaurant with hours of operation being 11:00 a.m. to 11:00 p.m. daily, except Sundays. The second floor premises, being the larger area with a capacity of 215 persons, have regular hours of operation from 12:00 noon to 1:00 a.m. daily except Sundays. Although suitable for dining, patrons generally use this room for drinking, dancing and/or listening to country and western entertainment. It is a self-serve lounge facility with very little food consumed, being mainly pre-wrapped sandwiches available at the bar.

At the Tribunal Hearing, the Board's investigator repeated his evidence given at the previous Hearing as to the problems the Licensee has been having, and still is experiencing, with regard to meeting the food/liquor ratio. These include the inexperience of the principals in the food/beverage business, poor management, faulty accounting procedures leading to inaccurate financial reports to the Board, the fairly recent closing of the downstairs dining facility for some months for renovation, and the reopening of same in June 1980.

The Licensee, Mr. Rodney Stiles, in his evidence, admitted that initially he and his partner had little or no experience in this type of business, and this led to hiring and subsequent firing of the first manager and the inaccuracy of financial reports submitted to the Board. In some detail he outlined the history of the operation, including its financial problem, the hiring of a new experienced manager and efforts made by management to promote the sale of food.

On all the evidence submitted, including the Licensee's admission that food/liquor figures furnished to the Board were incorrect, the Tribunal finds that the Licensee is in breach of Section 6 (5) of Regulation 1008/75 under the Liquor Licence Act, and hereby confirms the Decision of the Liquor Licence Board of September 16th, 1980, and directs the Board to set the effective date of the commencement of the attachment of the Term and Condition.

389011 ONTARIO LIMITED/433189 ONTARIO LIMITED
(SELBY HOTEL)

APPEAL FROM THE DECISION OF THE LIQUOR LICENCE
BOARD SUSPENDING THE LICENCES

TRIBUNAL: JOHN YAREMKO, Q.C., CHAIRMAN
GALE McAULEY, MEMBER
BARBARA SHAND, MEMBER

COUNSEL: NICHOLSON D. McRAE, Q.C. representing the Applicant
S. A. GRANNUM, representing the Liquor Licence Board

HEARING
DATE: December 1, 1981

REASONS FOR DECISION AND ORDER

The Tribunal finds that on January 28, 1981 at about 12:40 a.m., one Cindy Musgrave also known as Cindy Catherine Block was served liquor in dining lounge area #1 of the licensed premises herein. She had entered the dining lounge and had sat at a table against a partition on the other side of which is the bar. No evidence as to her age was required prior to the service. An investigating Constable gave testimony which is accepted by the Tribunal that the appearance of Cindy Catherine Block was that of a 17 year old female. The Tribunal finds that the said female was in fact under the age of nineteen.

At the time of the incident, there was in respect of lounge area #1 where the bar is situate, and in respect of the dining lounge area #1 only one staff member on duty as bar tender within the lounge area #1 separated by the partition from dining lounge area #1. The persons who were served in the whole area of lounge #1 and dining lounge #1 were under the supervision of the bar tender. The situation of the two areas is such that it is not possible to either serve or supervise the persons in dining lounge area #1 from the bar directly.

The Tribunal finds that one Bernard Mason, who had been employed in December 1980 for the short while of four shifts, at this time performed the service of a waiter in the dining lounge area and served Cindy Catherine Block. The

bar tender Mr. Killfeather to whom supervision of this area had been delegated on behalf of the licensee knew or ought to have known what Mason was doing. The responsibility of the service to Miss Block and the responsibility of ensuring that satisfactory evidence as to her age was obtained, was that of Killfeather and accordingly that of the licensee.

The applicable sections are:

Section 11(3) of the Act which reads in part,

"...the Board may.... suspend....a licence issued under section 6...where the licensee is in breach of a term or condition of the licence."

Under the heading "terms and conditions of a licence", paragraph b of section 5(5a) which reads as follows:

"(5a) The holder of a licence shall ensure that evidence as to the age of the person, satisfactory to the licence holder is obtained,

.....

(b) prior to serving liquor to a person apparently under the age of nineteen years on any premises prescribed by section 46."

Section 46 of the Regulations prescribes as premises:

(a) premises for which a dining room or dining lounge licence has been issued."

The Tribunal finds that the licensee has been in breach of the term and condition condition of the dining lounge licence as set out in Regulation 5(5a) of Ontario Regulation 1008/75.

Representation was made as to the harshness of the penalty. The Tribunal finds that though the Board proposed to suspend for a period of 14 days, it in fact suspended for a period of 16 days. The Tribunal has set forth a principle of not interfering with a period set by the Board unless there is reason to do so; in this instance the Tribunal finds no such reason. The Tribunal is aware of the very significant improvement in the operation which has taken place since the decision of the Board. However, the Tribunal must deal with the matter as it occurred on January 28, 1981.

However, the Tribunal finds that the breach is only in respect of dining lounge area #1 and not in respect of dining lounge area #2N or of lounge areas #1 and #2. Nothing was placed before the Tribunal with respect to the operation of the premises that night in respect of these other licensed areas.

Accordingly, by virtue of the authority vested in it under the Liquor Licence Act, the Tribunal hereby alters the decision of the Liquor Licence Board by changing the order of suspension of the dining lounge and lounge premises known as the Fairway lounge to an attachment of a term and condition to dining lounge licence, Serial No. D10382 in that Room 1 semi-basement north centre section, herein referred to as dining lounge #1, be closed for the sale, service and consumption of liquor for a period of 16 days to be set by the Liquor Licence Board and the Tribunal hereby so orders.

The above decision and reasons therefor were orally given at the conclusion of the hearing by the Chairman in the presence of the other two members who concurred.

RICHARD ALLEN DAVIDSON
(SIOUX HOTEL)

APPEAL FROM A DECISION OF THE LIQUOR LICENCE BOARD
TO SUSPEND THE LOUNGE LICENCE

TRIBUNAL JOHN YAREMKO, Q.C., CHAIRMAN
GORDON I. PURVIS, Q.C., MEMBER
KENNETH VANHAMME, MEMBER

COUNSEL: RICHARD ALLEN DAVIDSON, appearing in person
S.A. GRANNUM, representing the Liquor Licence Board

HEARING
DATE: November 5th, 1981

REASONS FOR DECISION AND ORDER

The Tribunal finds that on or about the 30th day of April, 1981 at 10:38 P.M. one Gregory Harold Hoey, born the 18th of February 1963 and one Daniel (Danny) Perron, born the 22nd of July 1962 were on that part of the premises operated under the Lounge Licence serial number L5092 issued to Richard Allan Davidson.

The young men entered the premises and were there only a short time playing at pinball machines. Upon becoming aware that they were sighted by police officers who recognized them one immediately left the premises and the other left subsequently. At the time there were some 30 persons in an area that was licenced to hold 211 so that the premises were only slightly occupied. The premises were under the general supervision of a bartender and a waitress. Evidence was placed before the Tribunal that the waitress did not see the two persons in question.

Regulation 1008/75 under the Act, Section 5,
Subsection 5a reads as follows:

"The holder of the licence shall ensure that evidence as to the age of the person, satisfactory to the licence holder, is obtained,

- a) prior to permitting a person apparently under the age of nineteen years entry to the premises not prescribed by section 46;..."

It is to be noted that this subsection is to be distinguished from section 5 (5) which states that:

"Subject to section 46 no holder of a licence shall permit any person under or apparently under the age of 19 years to enter or remain upon licensed premises."

It would appear that other than the general supervision provided by the bartender and waitress there was no provision for any action being taken prior to the entry of persons to the premises apparently under the age of 19 years.

A police officer testified that it was not obvious that the two men were over the age of 19. Such a situation should dictate to a prudent person to require evidence in order to determine the legality of the entry of such persons to the premises. No provision was made in the establishment for pre-screening; and indeed there was no evidence that employees such as the waitress and the bartender to whom the licensee had assigned the responsibility, received any caution that since there was no pre-screening provision that there should be an even greater degree of vigilance with respect to persons on the premises. That the waitress did not see the young men is not an answer. That there is no practice of someone at the door in licenced establishments in the area is not an answer. The fact that they were there only for a minute or two is not an answer. The Lieutenant Governor in Council in providing this particular regulation has directed attention to action being taken prior to the entry so that the length of time with respect to this section is not a relevant matter. The licensee has stated that such an obligation is an awesome burden upon the licensee. So be it, and if it is a burden that is awesome in the eyes of the licensee, it is a burden which has been imposed by the regulations. It is a burden which goes with the licence. No one need describe the burden, that is a matter of general knowledge. On the other hand the concern of the authorities with respect to under aged persons should also be a matter of which licensees should now be aware. Provision with respect to patrons in general and those under the age of 19 years include eternal vigilance, and the taking of those steps which will prevent the occurrence legislated against. If such provision is not adequate, the licensees are assuming the risk of the penalties which will follow.

The Tribunal does find that the operation has been satisfactory and that the intent of the operator has been to have a good operation; but that intent must also go with the

licence. The Board was aware of the satisfactory operation of the premises, and there was a reduction from the fourteen days suspension proposed in the notice of proposal to seven days.

In the Chatsworth case (Vol. 4 L.L.A.T., page 24) the Tribunal stated that it should not interfere with penalties imposed by the Board except for good reason. It has been brought to the attention of the Tribunal that at the conclusion of its proceedings the Board was prepared to suspend for three days. One can assume from that that the Board was of the opinion that a three day suspension would be sufficient both as a penalty to be imposed upon the licensee, and as a deterrent to others, under the circumstances.

The Tribunal finds that the licensee was on the 30th day of April, 1981 in breach of Regulation 5 (5a). Under the circumstances of the incident, and in the light of the operation of the business of the licensed premises, the Tribunal alters the decision of the Board to a suspension of three days and directs the Board to set the date of the commencement of the suspension.

The above decision and reasons therefore were orally given at the conclusion of the hearing by the Chairman in the presence of the other two members who concurred.

WALKER 917 RESTAURANT
ANNA MAGYAR

APPEAL FROM A DECISION OF THE LIQUOR LICENCE
BOARD TO ATTACH TERMS AND CONDITIONS TO THE
DINING LOUNGE LICENCE

TRIBUNAL: JOHN YAREMKO, Q.C., CHAIRMAN
KENNETH VANHAMME, MEMBER
JACK C. SIM, MEMBER

COUNSEL: MRS. ANNA MAGYAR, appearing in person

S.A. GRANNUM, representing the Liquor Licence Board

HEARING June 19th, 1981 and
DATES: November 2nd, 1981

REASONS FOR DECISION AND ORDER

The Tribunal finds that the licensee has been in breach of section 6, subsection (5) of Regulation 1008/75 since acquisition of the operation as licensee in August 1979.

The Tribunal finds further that from August 19, 1979 to April 1980, the licensee filed figures which showed an average liquor ratio of about 80% and food 20%; that from May 1980 to June 1981, the licensee filed incorrect figures to demonstrate a liquor ratio just under 50% and food just over 50%; that for the months of July, August and September 1981, the licensee filed correct figures which show a decreasing liquor ratio of liquor from 67% to 57% and food ratio increasing from 33% to 43%.

The Tribunal finds that the licensee is operating a bone fide restaurant (food operation) in a dining establishment with three large dining areas licenced; that the areas are well equipped and well decorated; that there are all the facilities necessary for the preparation and service of food; that there are extensive efforts made in the advertising, promotion and presentation of food.

The Tribunal finds that owing to the location of the restaurant in an industrial area and the present economic situation, difficulties continue in meeting the 50-50 balance required during the full period of operation. However, the ratio is met during the lunch and early dinner period.

The Tribunal has listened to the extenuating circumstances put forward by the licensee with respect to her misguided filing of incorrect figures when as licensee she became aware of the difficulties that correct figures would create for her. The Tribunal regards such incorrect filings as a most serious action and the licensee should be aware that there is no justification for such action and the Tribunal trusts that the licensee is aware of the consideration which she has received in this matter.

Upon an assessment of the total situation and operation, the Tribunal alters the decision of the Board so that commencing Monday, November 9th, 1981, the term and condition shall be attached to the licence in question that the sale and service of alcoholic beverages shall cease at 10:00 p.m. daily, provided that if the requirements of section 6, subsection (5) of Regulation 1008/75 are not satisfied in aggregate for the months of November and December, 1981, and January 1982, the sale and service thereafter shall cease at 9:00 p.m. until such time as the requirements of Section 6, subsection (5) of Regulation 1008/75 are satisfied.

The above decision and reasons therefor were orally given at the conclusion of the hearing by the Chairman in the presence of the other two members who concurred.

WEDNESDAY'S CHILD RESTAURANT

APPEAL FROM AN ORDER OF THE LIQUOR LICENCE
BOARD TO SUSPEND A DINING LOUNGE LICENCE

TRIBUNAL: GORDON I. PURVIS
BARBARA SHAND, MEMBER
GALE MCAULEY, MEMBER

COUNSEL: DAVID CONRAD, representing the Applicant
S. A. GRANNUM, representing the Liquor Licence Board

HEARING
DATE: November 20, 1981

REASONS FOR DECISION AND ORDER

The Licensee is a corporation known as 448124 Ontario Limited and is the holder of a Dining Lounge Licence No. 022024 for the establishment named Wednesday's Child Restaurant, 132 Queen's Quay, East, Toronto, Ontario. The Licenceholder acquired the licensed premises in December 1980, and the officers and directors of the licensee corporation are:

George Chronopoulos - President
Socrartis Stenisiotis - Secretary-Treasurer

The Licensed premises consist of two areas on the second floor of a two-storey building having capacities of 178 and 109 persons.

On July 29th, 1981, the Liquor Licence Board issued a Notice of Proposal "to suspend for a period of seven (7) days the Dining Lounge Licence of the Licenceholder because the past conduct of the officers and directors of the licensee corporation affords reasonable grounds for belief that its business has not been and will not be carried on in accordance with law in that on Sunday, December 14th, 1980 at approximately 2:40 a.m. there were in the licensed premises consuming wine six (6) persons, and the wine had been served to them by George Chronopoulos, an officer of the licensee corporation. The said officer of the corporation had, contrary to Section 6 (20) of the Regulations under the Act, failed to remove all evidence of the service and consumption of liquor within one-half hour after the sale and service of liquor must cease in licensed premises."

At a Hearing held before the Liquor Licence Board on September 3rd, 1981, to consider its proposal, it was noted that the Licenceholder, having requested a Hearing, did not appear although proper notice of the Hearing had been given. In support of the Board's position the necessary evidence was given and the following Decision was issued:

"In view of the non-appearance of Mr. George Chronopoulos, President of the licensee corporation, at the proceedings scheduled for this date the Board ordered that the aforesaid 'Proposal' be carried out, and the 'Dining Lounge' Licence issued to 448124 Ontario Limited, in respect of Wednesday's Child Restaurant, be "Suspended" for a period of seven (7) business days effective at the opening hour on Monday, September 21, 1981, and to continue in effect until the opening hour on Tuesday, September 29, 1981."

As a result of this Decision the Licensee requested a Hearing before the Tribunal.

At the Tribunal Hearing Constable David Fawcett of The Metropolitan Toronto Police Force gave evidence that on Sunday, December 14th, 1980, at approximately 2:20 a.m., accompanied by Constable John Burgess, he approached the establishment, having noted that, due to the traffic and cars in the vicinity, it appeared to be still in full operation. Constable Fawcett and his partner were met by two men, one of whom, Aires Chronopoulos, identified himself as the owner. The Constable observed that in his opinion this person was very intoxicated, and also observed at the time that there were six or seven people in the establishment drinking wine, and there were many wine glasses still on the tables. In response to Constable Fawcett's caution that all evidence of the service and consumption of liquor should have been removed within one half hour after the sale and service of liquor had ceased, Mr. Chronopoulos stated that 'Sargeant Parke of No. 52 Division said it was O.K.'. The officer was then taken on a tour of the premises and upon returning approximately two minutes later found that all the tables had been cleared and the people who were present had left. The following day Constable Fawcett returned to the establishment and served Aires Chronopoulos with a Provincial Court Summons for failing to clear signs of sale and service of alcoholic beverages in the time prescribed in Section 6 (20) of the Regulations to the Liquor Licence Act. After several remands, on June 12th, 1981, Aires Chronopoulos was convicted in absentia, was fined \$100.00, and the Certificate of Conviction appears in the record of the Board proceedings, being Exhibit 4.

In rebuttal, the Licensee's Counsel, Mr. Conrad, examined three witnesses, including the majority shareholder of the licensee corporation, Mr. George Chronopoulos, the head waiter, Mr. Larry Kohut, and the Manager of the establishment's discotheque, Miss Donna James. Mr. Kohut maintained that on the day in question the serving of alcoholic beverages had ceased before the 1:00 a.m. closing. The six persons still at the table, being the last hangers-on of a very busy night, were drinking either soft drinks or Angostura Bitters and soda (usually used for upset stomachs), and if any wine was served or consumed after hours he would have known about it and stopped it. In her evidence, Miss James also confirmed the above assertion that no wine had been served after hours. Mr. Chronopoulos was acting as Chef in the kitchen most of the evening in question, and although his function was to close the bar, which he maintains he did before 1:00 a.m., he was otherwise too busy to observe or have knowledge of the evidence described above. Furthermore he asserted that his brother, Aires Chronopoulos, had no function in the establishment's operation, and was merely temporarily helping out.

In summation, the Board's Solicitor's contention was that, from the evidence given by Police Constable Fawcett, both at the Board and Tribunal Hearings, the reasonable inference to be made is that, contrary to Section 6 (20) of the Regulations, 'all evidence of the service and consumption of liquor' had not been removed, and that a breach of the Regulations had taken place, i.e. wine and wine glasses were on the tables at 2:40 a.m. and the consumption of wine was still taking place. As to the evidence of proof, he referred the Tribunal to the case of *Re: Bernstein & College of Physicians' & Surgeons of Ontario*, 1977, 15 O.R. 2nd Series at Page 470, being a Decision of the Divisional Court of The High Court of Justice where Mr. Justice O'Leary made the following observations -

"The important thing to remember is that in Civil Cases there is no precise formula as to the standard of proof required to establish a fact ---. In all cases, before reaching a conclusion of fact, the Tribunal must be reasonably satisfied that the fact occurred, and whether the Tribunal is so satisfied will depend on the totality of the circumstances, including the nature and consequences of the fact or facts to be proved, the seriousness of the allegation made, and the gravity of the consequences that will flow from a particular finding."

In summarizing the evidence, Mr. Grannum submitted that the police constable observed wine in glasses being consumed, and although he did not pick up or take a sample, no evidence was given to rebutt the reasonable inference that a breach of the Regulations had occurred.

Mr. Conrad, Counsel for the Licensee, based his submission mainly on the fact, as he put it, that Police Constable Fawcett only assumed but did not know that the glasses on the tables contained wine, and did not smell or taste the contents nor take away any evidence of same. Furthermore he contended that from the evidence given the glasses could conceivably have contained liquids other than alcoholic beverages.

Having considered the evidence given on behalf of both the Board and the Licensee and also the above submissions of Counsel, the Tribunal is satisfied in accordance with the criterion set out above and finds as a fact that glasses containing wine were on the tables in this establishment at 2:20 a.m. on December 14th, 1980, i.e. one hour and twenty minutes following the cessation of the sale and service of liquor at 1:00 a.m. and accordingly the Licenceholder was in breach of Section 6 (20) of the Regulations.

Counsel for the Licensee has stressed the consequences of the penalty with respect to the financial effect on the establishment's operation, and the Tribunal is of the opinion that any Licensee must continually be aware that any breach of a Regulation may lead to a suspension, and that suspension may lead to such consequences. In the ordinary course of the administration of the Liquor Licence Act the Tribunal is loath to interfere with a penalty imposed by the Board.

Accordingly, the Liquor Licence Appeal Tribunal hereby confirms the Decision of the Liquor Licence Board dated the 3rd day of September, 1981, to suspend the Dining Lounge Licence for a period of seven (7) business days, and the Tribunal hereby directs the Board to set the commencement and termination of the said period.



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